SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

LOCAL No. 6167, UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AFFILIATED WITH THE INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL., PETITIONERS,

vs.

JEWELL RIDGE COAL CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

VOL. II

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[fol. 1] PLAINTIFF'S EXHIBIT No. 1

Code of Fair Competition for the Bituminous Coal Industry

Article I

Purposes

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the bituminous coal industry and upon approval by the President shall be the standards of fair competition for this Industry.

Article II

Definitions

As used in this Code the term "Industry" as applied to the Bituminous Coal Industry means the production and original sale of all kinds of coal (except anthracite), lignite, and the production and original sale of coke other than by-product coke.

The term "employer" includes any person employing labor in any phase of the industry.

The term "employee" includes all persons employed in the industry except members of the executive, supervisory, technical and confidential personnel.

The term "Administrator" means the official designated by the President to administer the National Industrial Recovery Act.

Article III

Maximum Hours of Labor

No employee shall be employed in excess of 40 hours in any calendar week after the effective date of this Code. No employee shall be required or permitted to work more than eight hours in any one day at the usual working places or otherwise in or about the mine, (exclusive of lunch period) whether paid by the hour or on a tonnage or other piece work basis.

[fol. 2] There shall be excepted from the foregoing limitations (a) employees required because of accidents which temporarily necessitate longer hours for them; (b) supervisors, clerks, technicians and that small number of employees at each mine whose daily task includes the handling

of man trips and haulage animals and those who are required to remain on duty while men are entering and leaving the mine.

The foregoing maximum hours of work shall not be construed as a minimum; and if at any mine a majority of the employed workers express their desire, by written request to the employer, to share available work with bona fide unemployed workers of the same mine, the number of hours work may be adjusted accordingly by mutual agreement between such employed workers and their employers.

Article IV

Minimum Rates of Pay

The basic minimum rate for inside skilled labor and the basic minimum rate for outside common labor shall be the rate hereinafter set forth in Schedule "A" for each district therein described for each such classification of labor, with the understanding that other classifications of employment will maintain their customary differentials above or below said basic minimum rates and that payments for work performed on a tonnage or other piecework basis will maintain their customary relationship to the payments on a time basis provided in said basic minimum rates.

Article V

Conditions of Employment

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) employers shall comply with the maximum hours of labor, minimum rates of pay and other conditions of employment, approved or prescribed by the President.

(b) In the submission or acceptance of this Code the interpretation is adopted of the requirements transcribed

in the foregoing paragraph (a) from Section 7 (b) of the National Industrial Recovery Act, which was jointly announced by the Administrator and General Counsel of the National Recovery Administration on August 24, 1933, a copy of which is attached to this Code as Schedule "B".

[fol. 3] (c) Except as otherwise hereinafter provided, all coal mined on a tonnage basis shall be weighed and the miner paid on the basis of a 2,000 or 2,240 pound ton. The miners shall have the right to a checkweighman, of their own choosing, to inspect the weighing of coal; *Provided*, that where mines are not now equipped to weigh coal a reasonable time may be allowed to so equip such mines; and provided, that in any case where rates of pay are based on any other method than on actual weights, the miners shall have the right to check the accuracy and fairness of the application of such methods, by representatives of their own choosing.

(d) The net amount of wages due shall be paid semimonthly in lawful money or par-check at the option of the operators. Any deductions from employees' pay, if not a matter of agreement, shall be in conformity with such general rules and regulations as the Administrator may prescribe for the purpose of preventing unfair deductions, or those which may in effect lower the rates of pay herein provided.

(e) Employees other than maintenance or supervisory men or those necessary to protect the property, shall not be required as a condition of employment to live in homes rented from the employer.

(f) No employee shall be required as a condition of employment to trade at the store of the employer.

(g) No person under seventeen (17) years of age shall be employed inside any mine or in hazardous occupations outside any mine, provided, however, that where a state law provides a higher minimum age, the state law shall govern; no person under the age of sixteen (16) shall be employed in or about a mine.

(h) As soon as possible after the adoption of this Code, the National Recovery Administration shall undertake, through a designated committee or agency, an investigation for the purpose of reporting on or before December 31, 1933; upon (a) the practicability and cost (assuming the

maintenance of existing rates of pay) of applying to bituminous coal mining a shorter work day and work week, (b) the effect of an advisability of revising wage differentials in the various divisions and districts of the industry and in the event of recommended change specification of the amount thereof; (c) the sales prices obtained for coal, or reasonably to be anticipated, up to the time of the report, for the purpose of determining whether wages and employment can be further increased or maintained without imposing undue burdens upon the industry.

On January 5, 1934, there shall be held a conference between representatives of employers and employees operating under this Code, together with representatives of the National Recovery Administration, for the purpose of determining what, if any, revisions may be desirable at that time of the wages, hours and differentials, or any other requirements of this Code, on the basis of conditions then existing and the report of the representatives of the National Recovery Administration made as hereinbefore provided.

[fol. 4] Unless revised by mutual agreement, as the result of said conference beginning January 5, 1934, the hours of work, minimum rates of pay and wage differentials as set forth in this Code shall continue in effect until April 1, 1934.

Article VI

Unfair Practices

Section 1. The selling of coal under a fair market price (necessary to carry out the purposes of the National Industrial Recovery Act, to pay the minimum rates herein established, and to furnish employment for labor) is hereby declared to be an unfair competitive practice and in violation of this Code. In order to determine the fair market price, agencies shall be established, as hereinafter provided, and sales of coal at any time at a price less than a fair market price determined and published, as hereinafter provided, shall create against any person selling at a lower rate a prima facie presumption that such a person is engaged in destructive price cutting and unfair competition. It shall be proper in determining such fair market price to take into consideration, in addition to the matters above

set forth, also competition with other coals, fuels and forms of energy or heat production.

Section 2. The fair market prices of coal of any grade and character referred to in the next preceding section, subject to the power of review hereinafter stated shall be

(a) The minimum prices for the various grades and sizes in the various consuming markets which may be established for future application by a marketing agency or by marketing agencies, of whatever form or howsoever constituted, now existing or hereafter created or organized, acting for coal producers truly representative of at least two-thirds of the commercial tonnage of any coal district or group of districts, such minimum prices to be effective when and as announced as provided in Section 4 hereof.

(b) The minimum prices for the various grades and sizes in the various consuming markets, where no such marketing agency exists, which may be established for future application by the respective Code Authorities hereinafter set up, for their respective areas, after [fols. 5-6] having given consideration to the various conditions and circumstances entering into the sale of each grade and class of commercial coal produced in the district or group of districts it represents, such minimum prices to be effective when announced as provided in Section 4 hereof.

(c) As a basis for determining the fair market price to be announced and published, as provided in the two preceding clauses, the Code Authorities shall utilize the Classifications of coals made by such agencies as are referred to in clause (a) of this section, and shall classify the coals in said districts referred to in clause (b) of this section, to which the various prices apply. Said Code Authorities shall, at all times, provide and keep open an office during business hours to which any coal producer in said districts and representative of the Administrator may apply for information with respect to said classifications and prices.

(d) The term "marketing agency" or "agency" as used in this Article shall include any trade association of coal producers complying with the requirements of

a marketing agency and exercising the functions thereof.

Section 3. The fair market prices established for future application under the provisions of Section 2 (a) shall be reported to said Code Authorities by any such marketing agencies in such manner as may be required by such authorities.

Section 4. The fair market prices of bituminous coal, established as aforesaid by such agencies and Code Authorities shall be published on the effective date of this Code, after approval by the Presidential Member of the Code Authority (acting under the direction of the Administrator), who in his approval may permit a reduction or increase in said prices by action of said agencies or Authorities within the limits which he may prescribe, and thereafter shall be published whenever any change is made therein, and not less frequently than once each month, and on the first of the month. Simultaneously with such publication, said fair market prices of bituminous coal shall be transmitted by the Code Authorities to the National Recovery Administrator for his further review and subsequent action.

* * * * * * *

[fol. 7] certain purchasers' services or privileges not extended to all purchases under like terms and conditions, is a violation of this Code.

Section 12. An attempt to purchase business, or obtain information concerning a competitor's business by gifts or bribes, is a violation of this Code.

Section 13. The intentional misrepresentation of analysis and/or sizes or the intentional making, causing or permitting to be made, or publishing, of any false, untrue, misleading or deceptive statement, by way of advertising, invoice, or otherwise, concerning the size, quality, character, nature, preparation or origin of any coal, bought or sold, is a violation of this Code.

Section 14. The unauthorized use, either in written or oral form, of trade-marks, trade names, slogans or advertising matter already adopted by a competitor, or deceptive approximation thereof, is a violation of this Code.

Section 15. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract, is a violation of this Code.

Section 16. Nothing in the foregoing sections of this Article shall prevent any American producer from creating special prices for overseas exports.

Section 17. The splitting or dividing of commissions, brokers fees, or brokerage discounts, or otherwise in any manner through sham or indirection the use of a brokerage commission or jobbers arrangements or sales agency for making discounts, allowances, or rebates, or prices other than those determined as provided in this Code, to any industrial consumer or to any retailer, or to others, shall be a violation of this Code.

Section 18. To sell to, or through, any broker, jobber, commission account, or sales agency, which is in fact an agent for an organization of retailers or industrial consumers, whereby they secure indirectly a discount, dividend, allowance, or rebates, or a price other than that determined as provided in this Code shall be a violation of this Code.

[fol. 8]

Article VII

Administration

Section 1. For the purposes of Administration of this Code, the Bituminous Coal Industry is hereby divided into five divisions as follows:

Division No. I. Pennsylvania, Ohio, Lower Peninsula of Michigan, Maryland, West Virginia, Kentucky, Northern Tennessee (including all counties not included within Division No. III), Virginia and North Carolina.

Division No. II. Iowa, Indiana and Illinois.

Division No. III. Alabama, Southern Tennessee (including Marion, Grundy, Sequatchie, White, Hamilton, Bledsoe and Rhea Counties), and Georgia.

Division No. IV. Missouri, Kansas, Arkansas, Oklahoma and Texas.

Division No. V. New Mexico, Colorado, Utah, Wyoming, North Dakota, South Dakota, Montana, Idaho, Washington, Oregon, California, Nevada and Arizona.

In each of the foregoing five divisions, sub-divisions may be established, as hereinafter provided.

Section 2. *Divisional Code Authorities:* For each of the foregoing divisions there shall be established within ten days after the effective date hereof, or within such further time as may be permitted by the Administrator, a Divisional Code Authority, or Sub-Divisional Code Authorities for the administration of this Code within such division, either for the division as a unit, or for subdivisions thereof, respectively, as may be determined. All the members of a Code Authority, except one (without vote and to be appointed by the President) shall be selected by an association or associations, or a committee of coal producers within the divisions or subdivisions which shall be truly representative of the industry therein and impose no inequitable restrictions on admission to membership. A full report of any such action taken to establish a Code Authority shall be made to the Administrator and shall become effective upon approval by him. A subdivision shall consist of a geographical area within which all coal producers shall be entitled to membership in the association or committee establishing the Code Authority. The Administrator shall have power to limit the number of subdivisions within a division and to determine any controversy arising in the establishment of such a Code Authority, and his [fol. 9] decision shall be conclusive as to compliance with the requirements of this Section and of the National Industrial Recovery Act in the initial establishment of such a Code Authority.

In the event that Sub-Divisional Code Authorities are established within a division, such Sub-Divisional Authorities shall establish a Divisional Code Authority to exercise the functions hereinafter provided for a Divisional Code Authority and any other functions which may be conferred upon the Divisional Code Authority by the Sub-Divisional Code Authorities, all in conformity with any rules and regulations prescribed by the Administrator. One member of a Divisional Code Authority, without vote, shall be appointed by the President.

A Code Authority shall administer this Code in its Division or Sub-division and shall have the duties and exercise the powers which are conferred upon it in this article and in Article VI. of this Code, and we shall have author-

ity to adopt appropriate by-laws, rules and regulations for the exercise of its functions.

Marketing agencies and trade associations may be established or maintained within any division or subdivision by a voluntary association of producers within any producing district therein, as such district may be defined by the Code Authority and function under such general rules and regulations as may be prescribed by the Code Authority, with the approval of his administrator, for the purpose of preventing any unfair practices, as defined in Article VI. of this Code.

Section 3. Each Code Authority shall collect and compile any reports and other information required under the National Industrial Recovery Act; and in investigations of any complaint of unfair practices the Presidential member of a Code Authority shall have power to require reports from, and shall be given access to inspect the books and records of producers within the jurisdiction of such Code Authority to the extent he may deem necessary for the determination of the validity of the complaint.

The expense of administering this Code by a Divisional (or Sub-divisional) Code Authority shall be borne by those subject to such Code Authority, each paying his proportionate share, as assessed, computed on a tonnage basis, in accordance with regulations prescribed by law and the Code Authority with the approval of the Administrator.

Section 4. *Industrial Board.* There shall be established within ten days after the creation of the Divisional Code Authorities a National Bituminous Coal Industrial Board, consisting of four members designated by the Divisional Code Authority of Division No. I, two members designated by the Divisional Code Authority of Division No. II, one member each designated by the Divisional Code Authorities of Divisions No. III, IV, and V, and the five members of the Divisional Code Authorities who have been appointed by the President. This Board shall have the duties and exercise the powers conferred upon it in this Code, or any revisions thereof and particularly shall meet from time to time at the call of the Administrator, who shall be ex officio [fol. 10] Chairman there of, to consider and to make recommendations to the Divisional Code Authorities and to the President as to any amendments of this Code, or other

measures which may stabilize and improve the conditions of the industry and promote the public interest therein.

Section 5. *Labor Relations.* (a) Any controversy concerning hours, wages and conditions of employment, or compliance with the provisions of Article V of this Code, between employers and employees who are organized or associated for collective action shall, if possible, to be adjusted by conference and negotiation between duly designated representatives of employers and such employees, meeting either in a mine conference or district conference or divisional conference, as the machinery for such conference may be established by agreement of the parties thereto; and it shall be the duty of employers and employees to exert every reasonable effort to establish such a machinery of adjustment and to utilize it to negotiate to a conclusion such controversies wherever possible.

(b) Any such controversy which cannot be settled in the manner so provided and which threatens to interrupt or has interrupted, or is impairing, the efficient operation of any mine or mines to such an extent as to restrain interstate commerce in the products thereof, shall be referred to the appropriate Bituminous Coal Labor Board, established as hereinafter provided, and the decision of said Board shall be accepted by the parties to the controversy as effective for a provisional period of not longer than six months, to be fixed by the Board.

(c) During the consideration of any such controversy either by the agreed machinery of adjustment, or by the Bituminous Coal Labor Board, neither party to the controversy shall change the conditions out of which the controversy arose, or utilize any coercive or retaliatory measures to compel the other party to accede to its demands.

(d) If any such controversy shall involve or depend upon the determination of who are the representatives of the employees chosen as provided in Section 7 (a) of the National Industrial Recovery Act, the appropriate Bituminous Coal Labor Board, through any agent or agency it may select, shall have the power to determine the questions by an investigation and, if necessary, by a secret ballot taken under its direction.

(e) A Bituminous Coal Labor Board shall be appointed by the President of each Division, except there shall be two Boards for Division No. 1, to exercise the powers herein conferred upon it, which shall consist of three members, one to be selected from nominations submitted by organizations of employees within such Division, one to be selected from nominations by the Divisional Code Authority and one who shall be wholly impartial and disinterested representative of the President. The expenses of such board shall be met by equal contributions from the employers and employees nominating members, the amount and method of collecting which shall be determined by regulations prescribed by the President.

[fol. 11] (f) There will be a National Bituminous Coal Labor Board composed of the members of the six divisional labor boards which may be convened upon call of the Administrator in the event that—

1. A controversy involves employers and employees of more than one division, or

2. The decision of a divisional labor board affects operating conditions of more than one division either directly or because of its effect upon competitive marketing, or

3. In the opinion of the Administrator the decision of a divisional labor board involves the application of a policy affecting the general public, or the welfare of the industry as a whole.

The National Bituminous Coal Labor Board may exercise all the powers conferred upon a divisional labor board, either in giving original consideration to a controversy, or in reviewing the decision of a divisional labor board, which may be either affirmed, set aside and—or modified.

[fol. 12]

Article VIII

Safety

Employers and employees shall cooperate in maintaining safe conditions of operation in compliance with the applicable requirements of State laws or regulations in conformity therewith.

Article IX

Amendments

Any Code Authority may propose amendments to this Code from time to time effective generally or as to the area within its jurisdiction which, after submission to any other Code Authority affected thereby (which shall include the divisional Code Authority in case of an amendment proposed by a subdivisional Code Authority), may be recommended by the Administrator for the approval of the President.

Article X

This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provision of sub-section (b) of Section 10 of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act and specifically, but without limitations, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

Article XI

Effective Date and Termination

This Code shall become effective on the second Monday following its approval by the President, and shall continue in effect until April 1, 1934, and thereafter, in the absence of the exercise of the power reserved to the President in Article X, subject to the exercise of the option, after 30 days notice to the Administrator, by any coal producer to withdraw his consent after April 1, 1934, to the further enforcement of the Code as a Code to which he has voluntarily given his consent.

[fol. 13]

SCHEDULE A

Basic Minimum Rates

District A	Minimum Inside Skilled Labor Per Day	Minimum Inside Skilled Labor Per Hour	Minimum Outside Common Labor Per Day	Minimum Outside Common Labor Per Hour
Pennsylvania [1]	$4.60	57½	$3.60	45
Ohio	4.60	57½	3.60	45
Lower Peninsula of Michigan	4.60	57½	3.60	45
Panhandle District of West Virginia [2]	Note A		Note A	
Somerset County, Pennsylvania	Note A		Note A	
District B				
Northern West Virginia [3]	4.36	54½	3.36	42
Preston County, West Virginia	Note A		Note A	
District C				
Southern West Virginia [4]	4.20	52½	3.20	40
Eastern Kentucky [5]	4.20	52½	3.20	40
Upper Potomac District of West Virginia [6]	4.20	52½	3.20	40
Maryland	4.20	52½	3.20	40
Virginia	4.20	52½	3.20	40
Northern Tennessee [7]	Note A		Note A	
Whitley, McCreary, Belt and Harlan Counties of Kentucky	Note A		Note A	
District D				
Indiana [8]	4.57½	57 1/5	4.20	52½
Warrick and Vanderburgh Counties of Indiana	Note A		Note A	
District E				
Illinois	5.00	62½	4.00	50
District F				
Iowa [9]	4.70	58¾	4.00	50
Wayne and Appanoose Counties of Iowa	Note A		Note A	

[fol. 14]

District G				
Missouri, Kansas, Arkansas and Oklahoma	3.75	46⅞	3.28	41
Texas	Note A		Note A	
District H				
Western Kentucky [10]	Note A		Note A	
District J				
Alabama	Note A		Note A	
Georgia	Note A		Note A	
Southern Tennessee [11]	Note A		Note A	

[fol. 15]

District K				
New Mexico	4.48	56	3.75	46⅞
Southern Colorado [12]	4.44	55½	3.75	46⅞
District L				
Northern Colorado [13]	5.00	62½	3.75	46⅞
District M				
Utah	5.44	68	4.48	56

SCHEDULE A—Continued

Basic Minimum Rates

	Minimum Inside Skilled Labor Per Day	Minimum Inside Skilled Labor Per Hour	Minimum Outside Common Labor Per Day	Minimum Outside Common Labor Per Hour
District N				
Southern Wyoming	5 42	67¾	4 44	55½
Northern Wyoming	5 42	67¾	4 54	56¾
District O				
Montana	5 63	70⅜	4 82	60¼
District P				
Washington	5 40	67½	4 00	50
District Q				
North Dakota	Note A		Note A	
South Dakota	Note A		Note A	

[fol. 16]

[1] Excludes Somerset County.

[2] Includes Hancock, Brooke, Ohio and Marshall Counties.

[3] Includes Monongalia, Marion, Harrison, Taylor, Lewis, Barbour, Gilmer, Upshur, Randolph, Braxton and Webster Counties and those mines in Nicholas County served by the B. & O. R. R.

[4] Includes all mines in counties not named under districts A and B and the Upper Potomac District.

[5] Includes all mines in Kentucky located east of a north and south line drawn along the Western boundary line of the City of Louisville except those located in Whitley, McCreary, Bell and Harlan Counties.

[6] Includes Grant, Mineral and Tucker Counties.

[7] Includes all counties not named under Southern Tennessee in District J.

[8] Excludes Warrick and Vanderburgh Counties.

[9] Excludes Wayne and Appandese Counties.

[10] Includes all mines in Kentucky west of a north and south line drawn along the western boundary of the City of Louisville.

[11] Includes Marion, Grundy, Sequatchie, White, Hamilton, Bledsoe and Rhea Counties.

[12] Includes all counties in Colorado not named under District L.

[13] Includes Jackson, Larimer, Weld, Boulder, Adams, Arapahoe, El Paso, Douglas, Elbert and Jefferson Counties.

Note A: Where minimum rates are not shown in the foregoing schedule, minimum rates shall be approved or prescribed by the President, prior to the effective date of this Code.

Note B: Differences between districts in the foregoing minimum rates are not to be considered as fixing permanent wage differentials or establishing precedents for future wage scales.

[fol. 17]

Schedule B

Statement Concerning Section 7 (a) of National Industrial Recovery Act

The plain meaning of Section 7 (a) cannot be changed by any interpretation by anyone. It is the function of the Administrator and the courts to apply and to interpret the law in its administration; and no one else can assume this function and no official interpretation can be circumscribed, affected or foreclosed by anyone writing his own interpreta-

tion into any code or agreement. Such an interpretation has no place there and cannot be permitted.

The words "open shop" and "closed shop" are not used in the law and cannot be written into the law.

These words have no agreed meaning and will be erased from the dictionary of the N. R. A.

The law requires in codes and agreements that "employees shall have the right to organize and bargain collectively through representatives of their own choosing."

This can mean only one thing, which is that employees can choose anyone they desire to represent them, or they can choose to represent themselves. Employers likewise can make collective bargains with organized employees, or individual agreements with those who choose to act individually; provided, of course, that no such collective or individual agreement is in violation of any State or federal law. But neither employers or employees are required, by law, to agree to any particular contract, whether proposed as an individual or collective agreement.

[fol. 18] The law provides that employees shall be free from the interference, restraint or coercion of employers in his exercise of their rights established by the law. The conduct of employers which is here prohibited has been defined by the Supreme Court in the case entitled—T. & N. O. R. R. v. Brotherhood of Railway Clerks, 281 U. S. 548. The rulings of the Supreme Court lay down the law which governs the N. R. A.

Under Section 7 (a), employers are forbidden to require "as a condition of employment" that an employee shall either "join a company union", or "refrain from joining, organizing, or assisting a labor organization of his own choosing." The law does not prohibit the existence of a local labor organization, which may be called a company union and is composed only of the employees of one company. But it does prohibit an employer from requiring, as a condition of employment, that any employee join a company union and it prohibits the maintenance of a company union, or any other labor organization, by the interference, restraint or coercion of an employer.

If there is any dispute in a particular case over who are the representatives of the employees of their own choosing, the N. R. A. will offer its services to conduct an impartial investigation and, if necessary, a secret ballot to settle the question.

The N. R. A. will not undertake in any instance to decide that a particular contract should be made, or should not be made between lawful representatives of employees and employers; or to decide that a contract which has been lawfully made should not be enforced.

Cooperation in all industrial relations depends largely on [fol. 19] the making and maintenance of agreements. The N. R. A. will promote and aid such cooperation.

Hugh S. Johnson, Donald R. Richberg.

[fol. 20] PLAINTIFF'S EXHIBIT No. 2

Approved Code No. 24—Amendment No. 1

Registry No. 702-45

National Recovery Administration

Amendment to Code of Fair Competition for the Bituminous Coal Industry as Approved on March 31, 1934

N. R. A.

We Do Our Part

United States Government Printing Office, Washington: 1934

[fol. 21] Approved Code No. 24—Amendment No. 1

Amendment to Code of Fair Competition for the Bituminous Coal Industry as Approved on March 31, 1934.

Order

Approving Amendment to Code of Fair Competition for the Bituminous Coal Industry

A serious emergency being threatened in the Bituminous Coal Industry and an application for the approval of an amendment to the Code of Fair Competition for the Bituminous Coal Industry in accordance with Exhibit A hereto annexed having been duly made by the Code Authorities for the Eastern Sub-division of Division No. 1, Western Pennsylvania, Sub-division of Division No. 1 and for Ohio,

pursuant to Article IX of said Code, and it appearing to me that such amendment will tend to effectuate the policy of Title 1 of the National Industrial Recovery Act; and is necessary in this emergency:

Pursuant to the authority vested in me under said Title of said Act and under said Code, by Executive Orders of the President, including Executive Order No. 6543-A dated December 30, 1933, and otherwise, it is hereby ordered that said application for amendment of said code be and it hereby is approved effective on April 1, 1934, in words and figures as set forth in said Exhibit A hereto annexed, subject to modification by my further order on the basis of cause shown, either at a public hearing thereon which shall be held on April 9, 1934, or otherwise.

Hugh. S. Johnson, Administrator for Industrial Recovery.

Washington, D. C., March 31, 1934.

[fol. 22] EXHIBIT "A"

Resolved, That amendments to Article III and Article IV of the Code of Fair Competition for the Bituminous Coal Industry by and the same hereby are proposed, to be and to become effective generally, so that said Article III and IV will read as follows:

Article III—Maximum Hours of Labor

No employee, except members of the executive, supervisory, technical and confidential personnel, shall be employed in excess of seven hours per day and five days per week, subject to the exceptions hereinafter stated.

Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piecework basis; except in cases of accident which temporarily necessitate longer hours for those required on account thereof; and also excepting that number of workers in each mine whose daily work includes the handling of man-trips and those required to remain on duty while men are entering and leaving the mine.

The following classes of mine workers are exempted from the provisions as to the maximum hours of work:

(a) All workers engaged in the transportation of coal shall work the additional time necessary to handle man-trips, and/or haulage animals, and all coal in transit, and shall be paid the regular hourly rates. Mine workers engaged in the dumping, handling and preparation of coal, and in the manufacture of coke, shall work the additional time necessary, not to exceed thirty minutes, to dump and prepare the coal delivered to the tipple each day and to complete the usual duties incidental to the operation of coke ovens, and shall be paid the regular hourly rate. This rule shall not encourage the working of such overtime except where it is necessary to take care of the conditions named.

(b) Employees engaged at power houses, substations and pumps operating continuously for 24 hours daily are especially exempted from the seven-hour provision. Special exemptions of employees other than those named above may be provided, by joint agreements negotiated in accordance with this code, which shall not provide for work in excess of 8 hours per day and 40 hours per week.

Article IV—Maximum Rates of Pay

From April 1, 1934 to April 1, 1935 the basic minimum rate for inside skilled labor and the basic minimum rate for outside common labor shall be the rate hereinafter set forth in Schedule "A" for each district therein described for each such classification of labor, with the understanding that other classifications of employment will maintain their customary differentials above or below said basic minimum rates.

To secure the parity between minimum rates for day labor and minimum pay for work performed on a tonnage [fol. 23] or other piece work basis, the latter shall be determined by the following increases over existing rates in all of the Districts of Schedule "A" except as hereinafter expressly provided:

On the basis of the 2,000 pound ton, an increase of 10 cents per ton for pick mining; 8 cents per ton for machine mining; an increase of 1 cent per ton for cutting, and for all yardage and deadwork rates an increase of 9 percent.

In addition to the increases above provided the minimum rates for tonnage and other piece work in Districts B, G, H, J and J-1, shall be further increased by an amount sufficient to maintain the parity between pay for such tonnage and piece work and the basic minimum rates for day labor as prescribed for such Districts in Schedule "A".

SCHEDULE A

Basic Minimum Rates

	Minimum Inside Skilled Labor		Minimum Outside (Common Labor)	
	Per Day	Per Hour	Per Day	Per Hour
District A				
Pennsylvania	$5.00	$0.71 4/10	$4.00	$0.57 1/10
Ohio	5.00	.71 4/10	4.00	.57 1/10
Lower Peninsula of Mich.	5.00	.71 4/10	4.00	.57 1/10
Panhandle District of W. Va.[1]	5.00	.71 4/10	4.00	.57 1/10
District B				
Northern West Virginia [2]	5.00	.71 4/10	4.00	.57 1/10
District C				
Southern West Virginia [3]	4.60	.65 7/10	3.60	.51 4/10
Eastern Kentucky [4]	4.60	.65 7/10	3.60	.51 4/10
Upper Potomac Dist. of W. Va.[5]	4.60	.65 7/10	3.60	.51 4/10
Maryland	4.60	.65 7/10	3.60	.51 4/10
Virginia	4.60	.65 7/10	3.60	.51 4/10
Northern Tennessee [6]	4.60	.65 7/10	3.60	.51 4/10
District D				
Indiana	4.57½	.65 5/10	4.20	.60
District E				
Illinois	5.00	.71 4/10	4.00	.57 1/10
District F				
Iowa [7]	4.70	.67 1/10	4.00	.57 1/10
Wayne & Appanoose Counties, Iowa	4.56	.65 1/10	4.00	.57 1/10
District G				
Missouri, Kansas, Arkansas, Oklahoma	4.60	.65 7/10	4.00	.57 1/10

[fol. 24]

District H				
Western Kentucky [8]	4.60	.65 7/10	3.75	.53 6/10
District J				
Alabama	4.60	.65 7/10	3.60	.51 4/10
Georgia	4.60	.65 7/10	3.60	.51 4/10
Southern Tenn., Hamilton and Rhea Counties	4.60	.65 7/01	3.60	.51 4/10
District J-1				
Marion, Grundy, Sequatchie, White, Van Buren, Warren and Bledsoe Counties in the State of Tennessee	4.60	.65 7/10	3.60	.51 4/10

SCHEDULE A—Continued

	Basic Minimum Rates			
	Minimum Inside Skilled Labor		Minimum Outside (Common Labor)	
	Per Day	Per Hour	Per Day	Per Hour
District K				
New Mexico	5.10	.72 8/10	4.10 8/10	.58 6/10
Southern Colorado [9]	5.10	.72 8/10	4.10 8/10	.58 6/10
District L				
Northern Colorado	5.25	.75	4.25	.60 7/10
District M				
Utah	5.44	.77 7/10	4.48	.64

[1] Includes Hancock, Brooke, Ohio and Marshall Counties.
[2] Includes Monogalia, Marion, Harrison, Taylor, Lewis, Barbour, Gilmer, Upshur, Randolph, Braxton, Preston and Webster Counties and those mines in Nicholas County served by the B. & O. R. R.
[3] Includes all mines in counties in West Virginia not named under Districts A and B and the Upper Potomac District.
[4] Includes all mines in Kentucky located east of a north and south line drawn along the Western boundary of the City of Louisville.
[5] Includes Grant, Mineral and Tucker Counties.
[6] Includes all counties in Tennessee not named under Southern Tennessee in District J and J-1.
[7] Excludes Wayne and Appanoose Counties.
[8] Includes all mines in Kentucky west of a north and south line along the western boundary of the City of Louisville.
[9] Includes all Counties in Colorado not named under District L.
[10] Includes Jackson, Larimer, Weld, Boulder, Adams, Arapahoe, El Paso, Douglas, Elbert and Jefferson Counties.

[fol. 25]

District N				
Southern Wyoming	$5.42	$0.77 5/10	$4.44	$0.63 5/10
Northern Wyoming	5.42	.77 5/10	4.54	.64 9/10
District O				
Montana	5.63	.80 5/10	4.82	.68 9/10
District P				
Washington	5.40	.77 1/10	4.00	.57 1/10
District Q				
North Dakota	4.50	.64 3/10	3.70	.52 9/10
	Tipple Employees			
North Dakota (strip mining, pit labor)	4.50	.64 3/10	3.70	.52 9/10
South Dakota	4.50	.64 3/10	3.70	.52 9/10

Note: Differences between districts in the foregoing minimum rates are not considered as fixing permanent wage differentials or establishing precedents for future wage scales.

Resolved: That the Chairman of this Code Authority deliver a copy of this resolution to the National Recovery Administration, to the end that it may submit the same to any other Code Authority affected thereby.

Resolved: That the National Recovery Administrator be and he hereby is requested to recommend said amendments for the approval of the President.

Resolved: That the National Recovery Administrator take such steps as may be appropriate to cause said amendments to become effective on April 1, 1934.

Certificate

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Code Authority for the Eastern Sub-division of Division No. 1 under the Bitu-
[fol. 26] minous Coal Code at a meeting held by it in Washington, D. C., on the 30th day of March, 1934.

Walter A. Jones, Secretary.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Code Authority of Western Pennsylvania, Sub-division of Division No. 1 under the Bituminous Coal Code at a meeting held by it in Washington, D. C., on the 30th day of March, 1934.

Byron H. Canon, Secretary.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Sub-divisional Code Authority for Ohio under the Bituminous Coal Code at a meeting held by it in Washington, D. C., on the 30th day of March, 1934.

R. L. Ireland, Secretary.

Approved Code No. 24, Amendment No. 1, Registry No. 702-45.

[fol. 27] PLAINTIFF'S EXHIBIT No. 3

Approved Code No. 24—Reprint. Registry No. 702—45

National Recovery Administration

Code of Fair Competition for the Bituminous Coal Industry as Approved on September 18, 1933 by President Roosevelt

Includes Amendments 1-3, Inclusive

[fol. 28] This publication is for sale by the Superintendent of Documents, Government Printing Office, Washington,

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[fol. 29] Approved Code No. 24

Code of Fair Competition for the Bituminous Coal Industry as Approved on September 18, 1933 by President Roosevelt

Executive Order

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Bituminous Coal Industry, and hearings having been held thereon and the Administrator having rendered his

report containing an analysis of the said Code of Fair Competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

Now, Therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and is hereby approved, subject to the following conditions:

(1) There shall be added to the first paragraph of Section 3 of Article VII of the Code the following sentence:

> All coal producers subject to the Code shall furnish to any government agency or agencies designated by the Administrator such statistical information as the Administrator may, from time to time, deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act and any reports and other information collected and compiled by a Code Authority, as heretofore provided, shall be transmitted to such government agencies as the Administrator may direct.

(2) There shall be added after the first sentence of Section 4 of Article VII the following sentence:

> The President may appoint not more than three members of the Industrial Board in addition to, or in substitution for one or more of, the aforesaid six members of the Divisional Code Authorities.

[fol. 30] (3) Schedule A as attached to the Code recommended by the Administrator is approved with the understanding that any basic minimum rates not fixed therein may be approved or prescribed by the President at any time prior to the effective date of this Code by a Supplementary Executive Order.

(4) Because it is evident that attempts by those submitting Codes to interpret Section 7 (a) of the National

Industrial Recovery Act have led to confusion and misunderstanding, such interpretations should not be incorporated in Codes of Fair Competition. Therefore, paragraph (b) of Article V must be eliminated without, by this exclusion, indicating disapproval in any way of the joint statement of the Administrator and General Counsel of the National Recovery Administration, which has been attached to the Code as Schedule B and was incorporated by reference in said paragraph (b) of Article V.

(5) The exception to the definition of "employee" in Article II belongs in Article III. Accordingly, the words "Except members of the Executive, supervisory, technical and confidential personnel" are stricken from the third paragraph of Article II. These same words are inserted in the first paragraph of Article III after the words "no employee."

Franklin D. Roosevelt.

Approval recommended: Hugh S. Johnson, Administrator.

The White House, September 18, 1933.

[fol. 31] September 17, 1933.

General Hugh S. Johnson, Administrator, National Recovery Administration, Washington, D. C.

Dear Sir: I present herewith for your consideration and recommendation to the President the Code of Fair Competition for the Bituminous Coal Industry.

Efforts were under way to secure the cooperation of the Bituminous Coal operators prior to and in anticipation of the passage of the National Industrial Recovery Act.

The state of utter disorganization in the industry involving the prevalence of unfair competitive practices, particularly in the payment of low wages in order to permit of unreasonably low coal prices, furnished a good example of the effects of unrestrained competition in an industry capable of great overproduction in relation to existing consumer demands. In numerous ways the Bituminous Coal Industry has furnished more convincing evidence of the need for the integrating force of the National Industrial Recovery Act than any other industry in the nation.

The initial and immediate activity of the Administrator and the present writer after your appointment was an ef-

fort to bring about a greater coordination and cooperation between the operators in the different sections of the country in this industry and largely in response to this effort there came into being the Northern Coal Control Association and the Smokeless Appalachian Coal Association, representing almost all producers in the Appalachian coal area which produces approximately 70% of the national Bituminous coal tonnage. These associations join in presenting a Code of Fair Competition, this being a remarkable exhibition of cooperation among coal producers who have been engaged for a generation in bitter competitive operations. Other associations in various regions presented separate Codes as did certain groups of individual producers thus offered to the Administration the problem of harmonizing in some manner the divergent views represented in some twenty-eight different Codes.

This industry also presented the unique problem of one in which there was far-reaching organization of labor on an industrial basis, The United Mine Workers of America having contracts with many operators in many fields and claiming organization of workers in many other fields where no contractual relations existed.

The difficulty of reconciling all the conflicting elements in this situation can hardly be overemphasized. During the progress of discussion following the public hearings representatives of the Appalachian Associations requested the aid of the Administration in facilitating the negotiation of a contract between these associations and the United Mine Workers of America, and it was evident to the Administration that this step having been taken a successful conclusion to these negotiations was of the utmost importance in bringing about the submission of a code for the industry as a whole.

In the detailed report which will be prepared for your consideration all the steps taken and the problems involved will be given more adequate consideration. At the present [fol. 32] time in view of the urgent need for the recommendation and approval of the code which was finally adopted and submitted for approval on September 16 by representatives of approximately 95 per cent of the national tonnage, it is desirable to make recommendations only as to the following minor details:

1. There is a provision in Article VII, section 3, requiring each code authority to collect and combine any re-

port and other information required under the National Industrial Recovery Act. This should be supplemented by a definite obligation imposed upon the industry to furnish to government agencies such statistical information as the administrator may deem necessary for the purposes recited in Section 3-A of the National Industrial Recovery Act in the form of an Executive Order to be recommended to the President. An appropriate provision will be drafted to cover these requirements.

2. In Article VII, Section 4, provision is made for establishing an Industrial board, to consist of nine members designated by the several divisional code authorities and the six members of the divisional authorities who have been appointed by the President. It appears that the provision as written may unduly restrict the President in placing on the Industrial Board only his appointees to the divisional code authorities.

Accordingly, it is recommended that as a condition of approval the President reserve the right to name not more than three members either in substitution for, or in addition to the six presidential appointees made members of the Industrial Board by the present provision of Section 4, of Article VII.

3. Schedule A fixes basic minimum rates for various districts and parts thereof leaving the rates for certain producing areas to be either approved or prescribed by the President prior to the effective date of the code. In view of progress made since the submission of the code in determining those rates not fixed in schedule A attached to this report, and desire to make it plain that no rates as fixed in Schedule A as submitted have been changed.

The code as recommended complies in all respects with the pertinent provisions of Title I of the Act. The groups submitting the code impose no inequitable restrictions on admission to membership therein and were truly representative of the Bituminous Industry.

The code as recommended is not designated to promote monopolies or to eliminate small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

From evidence adduced during the hearing and all available information, it is believed that this code as now

proposed and revised represents an effective, practical solution for this industry, and its approval as herewith submitted is recommended.

Respectfully submitted,

K. M. Simpson, Deputy Administrator.

Approved: Hugh S. Johnson, Administrator.

[fol. 33] Code of Fair Competition for the Bituminous Coal Industry

Article I—Purposes

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the bituminous-coal industry and upon approval by the President shall be the standards of fair competition for this Industry.

Article II—Definitions

As used in this Code the term "Industry" as applied to the Bituminous Coal Industry means the production and original sale of all kinds of coal (except anthracite), lignite, and the production and original sale of coke other than byproduct coke.

The term "employer" includes any person employing labor in any phase of the industry.

The term "employee" includes all persons employed in the industry.

The term "Administrator" means the official designated by the President to administer the National Industrial Recovery Act.

Article III—Maximum Hours of Labor

No employee, except member of the executive, supervisory, clerical, technical and confidential personnel, shall be employed in excess of seven hours per day and five days per week, subject to the exceptions hereinafter stated.

Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piecework basis; except in cases of accident which ten-

porarily necessitate longer hours for those required on account thereof; and also excepting that number of workers in each mine whose daily work includes the handling of man-trips and those required to remain on duty while men are entering and leaving the mine.

The following classes of mine workers are exempted from the provisions as to the maximum hours of work:

(a) All workers engaged in the transportation of coal shall work the additional time necessary to handle man-trips, and/or haulage animals, and all coal in transit, and shall be paid the regular hourly rates. Mine workers engaged in the dumping, handling and preparation of coal, and in the manufacture of coke, shall work the additional time necessary, not to exceed thirty minutes, to dump and prepare the coal delivered to the tipple each day and to complete the usual duties incidental to the operation of coke ovens, and shall be paid the regular hourly rates. This rule shall not encourage the working of such overtime except where it is necessary to take care of the conditions named.

[fol. 34] (b) Employees engaged at power houses, substations and pumps operating continuously for 24 hours daily are especially exempted from the seven-hour provision. Special exemptions of employees other than those named above are provided, by joint agreements negotiated in accordance with this code, which shall not provide for work in excess of 8 hours per day and 40 hours per week.[1]

Article IV—Minimum Rates of Pay

From April 1, 1934 to April 1, 1935 the basic minimum rate for inside skilled labor and the basic minimum rate for outside common labor shall be the rate hereinafter set forth in Schedule "A" for each district therein described for each such classification of labor, with the understanding that other classifications of employment will maintain their customary differentials above or below said basic minimum rates.

To secure the parity between minimum rates for day labor and minimum pay for work performed on a tonnage or other piece work basis, the latter shall be determined by the following increases over existing rates in all of the Dis-

[1] Amendment No. 1.—Approved Mar. 31, 1934.

tricts of Schedule "A" except as hereinafter expressly provided:

On the basis of the 2,000 pound ton, an increase of 10 cents per ton for pick mining; 8 cents per ton for machine mining; an increase of 1 cent per ton for cutting, and for all yardage and deadwork rates an increase of 9 percent.

In addition to the increases above provided the minimum rates for tonnage and other piecework in Districts B, G, H, J and J-1, shall be further increased by an amount sufficient to maintain the parity between pay for such tonnage and piece work and the basic minimum rates for day labor as prescribed for such Districts in Schedule "A".[2]

Article V—Conditions of Employment

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

(b) Except as otherwise hereinafter provided, all coal mined on a tonnage basis shall be weighed and the miner paid on the basis of 2,000 or 2,240 pound ton. The miners shall have the right to a check-weighman, of their own choosing, to inspect the weighing of coal: *Provided*, that where mines are not now equipped to weigh coal a reasonable time may be allowed to so equip such mines; and *pro-*
[fol. 35] *vided*, that in any case where rates of pay are based on any other method than on actual weights, the miners shall have the right to check the accuracy and fairness of the application of such methods, by representatives of their own choosing.

[2] Amendment No. 1.—Approved Mar. 31, 1934.

(c) The net amount of wages due shall be paid semi-monthly in lawful money or par-check at the option of operators. Any deductions from employees' pay, if not a matter of agreement, shall be in conformity with such general rules and regulations as the Administrator may prescribe for the purpose of preventing unfair deductions, or those which may in effect lower the rates of pay herein provided.

(d) Employees other than maintenance or supervisory men or those necessary to protect the property shall not be required as a condition of employment to live in homes rented from the employer.

(e) No employee shall be required as a condition of employment to trade at the store of the employer.

(f) No person under seventeen (17) years of age shall be employed inside any mine or in hazardous occupations outside any mine, provided, however, that where a state law provides a higher minimum age, the state law shall govern; no person under the age of sixteen (16) shall be employed in or about a mine.

(g) As soon as possible after the adoption of this Code, the National Recovery Administration shall undertake, through a designated committee or agency, an investigation for the purpose of reporting on or before December 31, 1933; upon (a) the practicability and cost (assuming the maintenance of existing rates of pay) of applying to bituminous coal mining a shorter work day and work week; (b) the effect of and advisability of revising wage differentials in the various divisions and districts of the industry and in the event of recommended change specification of the amount thereof; (c) the sales obtained for coal, or reasonably to be anticipated, up to the time of the report, for the purpose of determining whether wages and employment can be further increased or maintained without imposing undue burdens upon the industry.

On January 5, 1934, there shall be held a conference between representatives of employers and employees operating under this Code, together with representatives of the National Recovery Administration, for the purpose of determining what, if any, revisions may be desirable at that time of the wages, hours, and differentials, or any other requirements of this Code, on the basis of conditions then

existing and the report of representatives of the National Recovery Administration made as hereinbefore provided.

Unless revised by mutual agreement, as the result of said conference beginning January 5, 1934, the hours of work, minimum rates of pay, and wage differentials as set forth in this Code shall continue in effect until April 1, 1934.

[fol. 36] Article VI—Unfair Practices

Section 1. The selling of coal under a fair market price (necessary to carry out the purposes of the National Industrial Recovery Act, to pay the minimum rates herein established, and to furnish employment for labor) is hereby declared to be an unfair competitive practice and in violation of this Code. In order to determine the fair market price, agencies shall be established, as hereinafter provided, and sales of coal at any time at a price less than a fair market price determined and published, as hereinafter provided, shall create against any person selling at a lower price a prima facie presumption that such a person is engaged in destructive price cutting and unfair competition. It shall be proper in determining such fair market price to take into consideration, in addition to the matters above set forth, also competition with other coals, fuels, and forms of energy or heat production.

Section 2. The fair market prices of coal of any grade and character referred to in the next preceding section, subject to the power of review hereinafter stated shall be—

(a) The minimum prices for the various grades and sizes in the various consuming markets which may be established for future application by a marketing agency or by marketing agencies, of whatever form or howsoever constituted, now existing or hereafter created or organized, acting for coal producers truly representative of at least two thirds of the commercial tonnage of any coal district or group of districts, such minimum prices to be effective when and as announced as provided in Section 4 hereof.

(b) The minimum rates for the various grades and sizes in the various consuming markets, where no such marketing agency exists, which may be established for future application by the respective Code Authorities hereinafter set up, for their respective areas, after having given consideration to the various conditions and circumstances entering into

the sale of each group of districts it represents, such minimum prices to be effective when announced as provided in Section 4 hereof.

(c) As a basis for determining the fair market price to be announced and published, as provided in the two preceding clauses, the Code Authorities shall utilize the Classifications of coals made by such agencies as are referred to in clause (a) of this section, and shall classify the coals in said districts not sold by such agencies and also the coals in the districts referred to in clause (b) of this section, to which the various prices apply. Said Code Authorities shall, at all times, provide and keep open an office during business hours to which any coal producer in said districts and any representative of the Administrator may apply for information with respect to said classifications and prices.

(d) The term "marketing agency" or "agency" as used in this Article shall include any trade association of coal producers complying with the requirements of a marketing agency and exercising the functions thereof.

Section 3. The fair market prices established for future application under the provisions of Section 2 (a) shall be reported to said Code Authorities by any such marketing agencies in such manner as may be required by such Authorities.

Section 4. The fair market price of bituminous coal, established as aforesaid by such agencies and Code Authori- [fol. 37] ties shall be published within fifteen days after the effective date of this Code, after approval by the Presidential Member of the Code Authority (acting under the direction of the Administrator), who in his approval may permit a reduction or increase in said prices by action of said agencies or Authorities within the limits which he may prescribe, and thereafter shall be published whenever any changes is made therein, and not less frequently than one each month, and on the first of the month. Simultaneously with such publication, said fair market prices of bituminous coal shall be transmitted by the Code Authorities to the National Recovery Administrator for his further review and subsequent action.

Section 5. Both the records and the data of such marketing agencies and of said Code Authorities shall be open to

inspection and investigation by any agent of the Administractor whom he shall appoint for that purpose. Should such an agent of the Administrator disapprove of any changes proposed in any fair market prices from those previously approved by the Administrator as being in excess of any reductions or increases allowed in such approval, such changes shall not be made effective unless and until the Administrator approves them.

Section 6. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent, is a violation of this code; provided, however, that coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or truck yards, tidewater ports, river ports, or lake ports, and-or docks beyond such ports, but such consignments shall be limited to cover:

(a) Bunker coal;

(b) Coal applicable against existing contracts;

(c) Coal for storage (other than in railroad cars) by the producer or his agent in rail or truck yards or on docks, wharves, or other yards for resale by the producer or his agent.

Section 7. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions creates price discrimination and is a violation of this Code.

Section 8. The prepayment of freight charges with intent or with the effect of granting a discriminatory credit allowance is a violation of this Code.

Section 9. The giving in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purpose of altering retroactively a price previously agreed upon in such manner as to create price discrimination is a violation of this Code.

Section 10. The predating or the postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona fide agreement for the purchase or sale entered into on the predate is a violation of this Code.

Section 11. Terms of sale shall be strictly adhered to; and the payment or allowance of rebates, refunds, credits,

or unearned discounts, whether in the form of money or otherwise, or extending to certain purchasers services or privileges not extended to all purchasers under like terms and conditions, is a violation of this Code.

[fol. 38] Section 12. An attempt to purchase business, or obtain information concerning a competitor's business of gifts or bribes, is a violation of this Code.

Section 13. The intentional misrepresentation of analysis and-or sizes or the intentional making, causing or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive, statement, by way of advertising, invoice, or otherwise, concerning the size, quality, character, nature, preparation or origin of any coal, bought or sold, is a violation of this Code.

Section 14. The unauthorized use, either in written or oral form, of trade marks, trade names, slogans, or advertising matter already adopted by a competitor, or deceptive approximation thereof, is a violation of this Code.

Section 15. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract, is a violation of this Code.

Section 16. Nothing in the foregoing sections of this Article shall prevent any American producer from creating special prices for overseas exports.

Section 17. The splitting or dividing of commissions, brokers fees, or brokerage discounts, or otherwise in any manner through sham or indirection the use of brokerage commission or jobbers arrangements or sales agency for making discounts, allowances, or rebates, or prices other than those determined as provided in this Code, to any industrial consumer or to any retailer, or to others, shall be a violation of this Code.

Section 18. To sell to, or through, any broker, jobber, commission account, or sales agency, which is in fact an agent for an organization of retailers or industrial consumers, whereby they secure indirectly a discount, dividend, allowance or rebates, or a price other than that determined in this Code shall be a violation of this Code.

Article VII—Administration

Section 1. For the purposes of Administration of this Code, the Bituminous Coal Industry is hereby divided into five divisions as follows:

Division No. I—Pennsylvania, Ohio, Lower Peninsula of Michigan, Maryland, West Virginia, Kentucky, Northern Tennessee, (including all counties not included within Division No. III), Virginia and North Carolina.

Division No. II—Iowa, Indiana, and Illinois.

Division No. III—Alabama, Southern Tennessee, (including Marion, Grundy, Sequatchie, White, Hamilton, Bledsoe and Rhea Counties); and Georgia.

Division No. IV—Missouri, Kansas, Arkansas, Oklahoma, and Texas.

Division No. V—New Mexico, Colorado, Utah, Wyoming, North Dakota, South Dakota, Montana, Idaho, Washington, Oregon, California, Nevada and Arizona.

In each of the foregoing five divisions, subdivisions may be established, as hereinafter provided.

Section 2. Divisional Code Authorities.—For each of [fol. 39] the foregoing divisions there shall be established within ten days after the effective date hereof, or within such further time as may be permitted by the Administrator, a Divisional Code Authority, or Subdivisional Code Authorities for the administration of this Code within such division, either for the division as a unit, or for subdivisions thereof, respectively, as may be determined. All the members of a Code Authority, except one (without vote and to be appointed by the President) shall be selected by an association or associations, or a committee of coal producers within the division or subdivision which shall be truly representative of ths industry therein and impose no inequitable restrictions on admission to membership. A full report of any such action taken to establish a Code Authority shall be made to the Administrator and shall become effective upon approval by him. A subdivision shall consist of a geographical area within which all coal producers shall be entitled to membership in the association or committee establishing the Code Authority. The Administrator shall have power to limit the number of subdivisions within a division and to determine any controversy arising in the establishment of such a Code Authority, and his decision shall be conclusive as to com-

pliance with the requirements of this Section and of the National Industrial Recovery Act in the initial establishment of such a Code Authority.

In the event that Subdivisional Code Authorities are established within a division, such Subdivisional Code Authorities shall establish a Divisional Code Authority to exercise the functions hereinafter provided for a Divisional Code Authority and any other functions which may be conferred upon the Divisional Code Authority by the Subdivisional Code Authorities, all in conformity with any rules and regulations prescribed by the Administrator. One member of a Divisional Code Authority, without vote, shall be appointed by the President.

A Code Authority shall administer this Code in its Division or Subdivision and shall have the duties and exercises the powers which are conferred upon it in this article and in Article VI of this Code, and shall have authority to adopt appropriate by-laws, rules and regulations for the exercise of its functions.

Marketing agencies or trade associations may be established or maintained within any division or subdivision by a voluntary association of producers within any producing district therein, as such district may be defined by the Code Authority and function under such general rules and regulations as may be prescribed by the Code Authority, with the approval of the Administrator, for the purpose of preventing any unfair practices, as defined in Article VI of this Code.

Section 3. Each Code Authority shall collect and compile any reports and other information required under the National Industrial Recovery Act; and in investigations of any complaint of unfair practices the Presidential members of a Code Authority shall have power to require reports from, and shall be given access to inspect the books and records of producers within the jurisdiction of such Code Authority to the extent he may deem necessary for the determination of the validity of the complaint. All coal producers subject to the Code shall furnish to any government agency or agencies designated by the Administrator such statistical information as the Administrator may, from time to time, deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act; and any reports and other information collected and

compiled by a Code Authority, as heretofore provided, shall be transmitted to such government agencies, as the [fol. 40] Administrator may direct.

The expense of administering this Code by a Divisional (or Subdivisional) Code Authority shall be borne by those subject to such Code Authority, each paying his proportionate share, as assessed, computed on a tonnage basis, in accordance with regulations prescribed by the Code Authority with the approval of the Administrator.

Section 4. Industrial Board.—There shall be established within ten days after the creation of the Divisional Code Authority a National Bituminous Coal Industrial Board, consisting of four members designated by the Divisional Code Authority of Division No. I, two members designated by the Divisional Code Authority of Division No. II, one member each designated by the Divisional Code Authorities of Divisions No. III, IV, and V and the five members of the Divisional Code Authorities who have been appointed by the President. The President may appoint not more than three members of the Industrial Board, in addition to, or in substitution for one or more of, the aforesaid five members of the Divisional Code Authorities. This Board shall have the duties and exercise the powers conferred upon it in this Code, or any revisions thereof and particularly shall meet from time to time at the call of the Administrator, who shall be ex officio Chairman thereof, to consider and to make recommendations to the Divisional Code Authorities and to the President as to any amendments of this Code, or other measures which may stabilize and improve the conditions of the industry and promote the public interest therein.

Section 5. Labor Relations.—(a) Any controversy concerning hours, wages, and conditions of employment, or compliance with the provisions of Article V of this Code, between employers and employees who are organized or associated for collective action shall, if possible, be adjusted by conference and negotiation between duly designated representatives of employers and such employees, meeting either in a mine conference or district conference or divisional conference, as the machinery for such conference may be established by agreement of the parties thereto; and it shall be the duty of employers and employees to exert every

reasonable effort to establish such controversies wherever possible.

(b) Any such controversy which cannot be settled in the manner so provided and which threatens to interrupt, or has interrupted, or is impairing the efficient operation of any mine or mines to such an extent as to restrain interstate commerce in the products thereof, shall be referred to the appropriate Bituminous Coal Labor Board, established as hereinafter provided, and the decision of said Board shall be accepted by the parties to the controversy as effective for a provisional period of not longer than six months, to be fixed by the Board.

(c) During the consideration of any such controversy either by the agreed machinery of adjustment, or by the Bituminous Coal Labor Board, neither party to the controversy shall change the conditions out of which the controversy arose, or utilize any coercive or retaliatory measures to compel the other party to accede to its demands.

(d) If any such controversy shall involve or depend upon the determination of who are the representatives of the employees chosen as provided in Section 7 (a) of the National Industrial Recovery Act, the appropriate Bituminous Coal Labor Board, through any agent or agency it may select, shall have the power to determine the questions by [fol. 41] an investigation and, if necessary, by a secret ballot taken under its direction.

(e) A Bituminous Coal Labor Board shall be appointed by the President for each Division, except the powers herein conferred upon it, which shall consist of three members, one to be selected from nominations submitted by organizations of employees within such Division; one to be selected from nominations by the Divisional Code Authority and one who shall be wholly impartial and disinterested representative of the President. The expenses of such board shall be met by equal contributions from the employers and employees nominating members, the amount and method of collecting which shall be determined by regulations prescribed by the President.

(f) There shall be a National Bituminous Coal Labor Board composed of the members of the six divisional labor boards which may be convened upon call of the Administrator in the event that—

1. A controversy involves employers and employees of more than one division, or

2. The decision of a divisional labor board affects operating conditions of more than one division either directly or because of its effect upon competitive marketing, or

3. In the opinion of the Administrator the decision of a divisional labor board involves the application of a policy affecting the general public, or the welfare of the industry as a whole.

The National Bituminous Coal Labor Board may exercise all the powers conferred upon a divisional labor board, either in giving original consideration to a controversy, or in reviewing the decision of a divisional labor board, which may be either affirmed, set aside and-or modified.

Article VIII—Safety

Employers and employees shall cooperate in maintaining safe conditions of operation in compliance with the applicable requirements of State laws or regulations in conformity therewith.

Article IX—Amendments

Any Code Authority may propose amendments to this Code from time to time effective generally or as to the area within its jurisdiction which, after submission to any other Code Authority affected thereby (which shall include the divisional Code Authority in case of an amendment proposed by a subdivisional Code Authority), may be recommended by the Administrator for the approval of the President.

Article X

This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provision of subsection (b) of Section 10 of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act and specifically, but without limitations, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

[fol. 42] Article XI—Effective Date and Termination

This Code shall become effective on the second Monday following its approval by the President, and shall continue in effect until April 1, 1934, and thereafter in the absence of the exercise of the power reserved to the President in Article X, subject to the exercise of the option, after 30 days' notice to the Administrator, by any coal producer to withdraw his consent after April 1, 1934, to the further enforcement of the Code as a Code to which he has voluntarily given his consent.

Approved Code No. 24.
Registry No. 702-45.

[fol. 43] SCHEDULE A[1]

Basic Minimum Rates

	Basic Minimum Rates			
	Minimum inside skilled labor		Minimum outside skilled labor	
	Per day	Per hour	Per day	Per hour
District A				
Pennsylvania	$5.00	$0.71 4/10	$4.00	$0.57 1/10
Ohio	5.00	.71 4/10	4.00	.57 1/10
Lower Peninsula or Michigan	5.00	.71 4/10	4.00	.57 1/10
Panhandle District of West Virginia [1]	5.00	.71 4/10	4.00	.57 1/10
District B				
Northern West Virginia [2]	5.00	.71 4/10	4.00	.57 1/10
District C				
Southern West Virginia [3]	4.60	.65 7/10	3.60	.51 4/10
Eastern Kentucky [4]	4.60	.65 7/10	3.60	.51 4/10
Upper Potomac District of W. Va.[5]	4.60	.65 7/10	3.60	.51 4/10
Maryland	4.60	.65 7/10	3.60	.51 4/10
Virginia	4.60	.65 7/10	3.60	.51 4/10
Northern Tennessee [6]	4.60	.65 7/10	3.60	.51 4/10
District D				
Indiana	4.57½	.65 5/10	4.20	.60
District E				
Illinois	5.00	.71 4/10	4.00	.57 1/10
District F				
Iowa [7]	4.70	.67 1/10	4.00	.57 1/10
Wayne and Appanoose Counties, Iowa	4.56	.65 1/10	4.00	.57 1/10
District G [8]				
Missouri, Kansas, Arkansas, and Oklahoma, shaft, drift or slope mines in States	4.35	.62 1/10	3.75	.53 6/10
Shaft, drift, and slope mines in Missouri, Kansas, Arkansas, and Oklahoma	4.00	.57 1/10	3.53	.50 4/10
District H				
Western Kentucky [8]	4.60	.65 7/10	3.75	.53 6/10

SCHEDULE A—Continued

Basic Minimum Rates

	Basic Minimum Rates			
	Minimum inside skilled labor		Minimum outside skilled labor	
	Per day	Per hour	Per day	Per hour
District J				
Alabama	3.80	.54 2/10	2.80	.40
Georgia	3.80	.54 2/10	2.80	.40
Southern Tennessee, Hamilton and Rhea Counties	3.80	.54 2/10	2.80	.40
District J-1				
Marion, Grundy, Sequatchie, White, Van Buren, Warren, and Bledsoe Counties in the State of Tennessee	4.24	.60 4/10	3.24	.46 2/10
District K				
New Mexico	5.10	.72 8/10	4.10	.58 6/10
Southern Colorado [9]	5.10	.72 8/10	4.10	.58 6/10
District L				
Northern Colorado [10]	5.25	.75	4.25	.60 7/10
District M				
Utah	5.44	.77 7/10	4.48	.64
District N				
Southern Wyoming	5.42	.77 5/10	4.44	.63 5/10
Northern Wyoming	5.42	.77 5/10	4.54	.64 9/10
District O				
Montana	5.63	.80 5/10	4.82	.68 9/10
District P				
Washington	5.40	.77 1/10	4.00	.57 1/10
District Q				
North Dakota	4.50	.64 3/10	3.70	.52 9/10
South Dakota	4.50	.64 3/10	3.70	.52 9/10

[fol. 44]

[1] Includes Hancock, Brooke, Ohio and Marshall Counties.

[2] Includes Monogalia, Marion, Harrison, Taylor, Lewis, Barbour, Gilmer, Upshur, Randolph, Braxton, Preston, and Webster Counties and those mines in Nicholas County served by the B. & O. R. R.

[3] Incluesd all mines in counties in West Virginia not named under District A and B and the Upper Potomac District.

[4] Includes all mines in Kentucky located east of a north and south line drawn along the Western boundary of the City of Louisville.

[5] Includes Grant, Mineral and Tucker Counties.

[6] Includes all Counties in Tennessee not named under Southern Tennessee in District J and J-1.

[7] Excludes Wayne and Appanoose Counties.

[8] Includes all mines in Kentucky west of a north and south line drawn along the western boundary of the City of Louisville.

[9] Includes all Counties in Colorado not named under District L.

[10] Includes Jackson, Larimer, Weld, Boulder, Adams, Arapahoe, El Paso, Douglas, Elbert, and Jefferson Counties.

Note: Differences between districts in the foregoing minimum rates are not to be considered as fixing permanent wage differentials or establishing precedents for future wage scales.

[2] Amendment No. 1—Approved Apr. 22, 1934.

[3] Amendment No. 3—Approved June 4, 1934.

[fol. 45] In view of the differentials hereby accorded District J, pending further order there shall be no sales by operators of said District into the normal consuming markets of another District which is subject to higher rates of pay, at any prices for coal of comparable grade and quality, less than the price for such coal in said market charged by such other District, and there shall be no destructive invasion of such other consuming markets and; in the absence of satisfactory agreements governing this matter, the determination of the Administrator on complaint of any such destructive invasion shall be conclusive. The requirement that the minimum rates for tonnage and other piecework in certain Districts should be further increased shall be modified so as to read as follows:

"In addition to the increases above provided the minimum rates for tonnage and other piecework in Districts B, G, H, J, and J-1, shall be further increased, if necessary, by an amount sufficient to maintain the customary relationship in the industry between pay for such tonnage and piecework and the basic minimum rates for day labor as prescribed for such districts in New Schedule A", that requirement as to increases in District B, shall be satisfied pending further order, by an increase per 2,000 pound ton for said District of two and one-half (2½) cents in loading rates and one-half (½) cent in cutting rate.[2]

In view of the differentials accorded District G, and in view of the situation existing in District H, pending further order there shall be no sales by operators of said Districts into the normal consuming markets of another District which is subject to higher rates of pay, at any prices for coal of comparable grade and quality, less than the price for such coal in said market charged by such other District, and there shall be no destructive invasion of such other consuming markets and; in the absence of satisfactory agreements governing this matter, the determination of the Administrator on complaint of any such destructive invasion shall be conclusive.[3]

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[2] Amendment No. 2—Approved Apr. 22, 1934.

[3] Amendment No. 3—Approved June 4, 1934.

[fol. 46] PLAINTIFF'S EXHIBIT No. 5

United Mine Workers of America

Charleston, W. Va.

September 30, 1933.

Mr. Geo. W. St. Clair, President, Jewell Ridge Coal Corporation, Jewell Ridge, Virginia.

MY DEAR SIR:

It is understood that your mines are in the Pocahontas-Tug River Coal field and the loading rates are 35.7¢ per ton. It is agreed between us that the Jewell Ridge Coal Corporation will increase the rates now being paid by it for dead work 20%. The rates for dead work in the Pocahontas-Tug River field shall not apply to your mines.

It is further agreed that the cutting rate with the short-wall machine shall be increased to 6½¢ per ton and that the cutting rate with the arcwall machine shall be 70% of 6½¢ if done by piece work.

It is distinctly understood this agreement sets no precedent for the establishment of future wage rates for dead work.

This agreement is made in the spirit of fairness with the knowledge that collective bargaining must always be on a basis of constructive co-operation between the company and the United Mine Workers of America.

Very truly yours, (Signature) Van A. Bittner.

[fol. 47] PLAINTIFF'S EXHIBIT No. 11

United Mine Workers of America

Welch, West Virginia.

April 22, 1937.

Mr. Huston St. Clair—Vice-Pres., Jewell Ridge Coal Corporation, Bluefield, West Virginia.

DEAR SIR:

Enclosed you will find the letter which you sent to me for Mr. Blizzard's and Mr. Bittner's signatures.

Yours truly, Jesse Aquino.

J.A./ms.

[fol. 48] PLAINTIFF'S EXHIBIT No. 11-a

Jewell Ridge Coal Corporation

Law & Commerce Bldg.

Bluefield, W. Va.

April 15, 1937.

Mr. Jesse Aquino, Box 311, Welch, W. Va.

DEAR SIR:

The agreement made by and between the Jewell Ridge Coal Corporation and the United Mine Workers of America, as evidenced by a letter of Mr. Van A. Bittner to Mr. George W. St. Clair in September, 1933, is hereby continued in effect.

It is agreed that the rates paid by the Jewell Ridge Coal Corporation at Jewell Ridge at the termination of the contract which expired March 31, 1937, will be continued and the rate of increase agreed to in the joint Appalachian Conference will be applied so that the new rates will be as follows:

Machine Loading	$ .597
Where machine cuts on pillar loading rate, including dead work	.751
Pick rate where machine does not undercut or overcut, tonnage rate including dead work	.844
Machine cutting, Shortwall machine	.095
The method of payment of yardage will be continued, with the exception of increasing the rate from $.648 to	.070

Will you please signify your acceptance of this agreement by signing and returning one of these copies.

Yours very truly, Jewell Ridge Coal Corporation, Huston St. Clair, Vice-Pres., H. E. Ewing, Supt.

Van A. Bittner, President. W. M. Blizzard, Vice-Pres. Jesse Aquino. Wm. Lester.

[fol. 49] PLAINTIFF'S EXHIBIT No. 12

Agreements by and between the Jewell Ridge Coal Corporation, Jewell Valley Mine, and the United Mine Workers of America, Local Union No. 7327, District 17, and the International Union, effective September 16, 1937, until March 31, 1939, inclusive:

The Agreements known as the Pocahontas-Tug River Agreements and entitled Appalachian and Pocahontas-Tug River Agreements by and between Pocahontas Operators Association and the United Mine Workers of America, District 17, and the International Union, effective April 1, 1937 until March 31, 1939, inclusive, apply at the Jewell Valley Mine, with the following exceptions only:

First: The Shortwall machine rate shall be $0.085 per net ton.

Second: The Pick rate shall be $0.682.

Third: The usual draw slate in excess of 4 inches shall be paid for at the rate of $0.079. No deductions shall be made for impurities in the seam or in the bottom.

Fourth: Where gob is required to be loaded out by the company the coal miner shall be compensated by means of a gob check for each car loaded. The value of the gob check shall equal one hour's time, and upon presentation at the office credit of $0.80 will be given the miner for each check presented. Possession of the gob check shall be evidence that the foreman required the miner to load a car of gob.

The above four agreements, and otherwise the Pocahontas-Tug River Agreements, constitute the total agreements between the United Mine Workers of America and the Jewell Ridge Coal Corporation, and are effective from September 16, 1937 until March 31, 1939, inclusive.

(Signed) Van A. Bittner, William Blizzard, United Mine Workers of America. Wm. Patterson, J. H. Shepherd, Roy Herrel, Jesse Aquino, Wm. Lester.

Jewell Ridge Coal Corporation, Huston St. Clair, Vice President,. (Signed) Huston St. Clair, H. E. Ewing, Genl. Superintendent (Signed) H. E. Ewing.

[fol. 50] PLAINTIFF EXHIBIT No. 13

Jewell Ridge, Virginia, September 12, 1941.

The agreement made by and between the Jewell Ridge Coal Corporation and the United Mine Workers of America, as evidenced by a letter of Mr. Van A. Bittner to Mr. George W. St. Clair in September, 1933, is hereby continued in effect.

The Southern Wage Agreement and the Pocahontas-Tug River Wage agreements will apply at the Jewell Ridge Mine except as follows:

It is agreed that the Jewell Ridge Coal Corporation will pay, effective April 1, 1941, to March 31, 1943, inclusive, the following wage rates differing from the Pocahontas-Tug River rates:

First: Where machine cuts on pillars, loading rate including dead work, will be (except in barrier pillars or similar blocks, the basic rate will apply during development) $0.861

Second: Pick rate where machine does not undercut, overcut or centercut, tonnage rate including dead work $0.964

Third: Machine cutting, shortwall machine $0.105

Fourth: The method of payment of yardage will be continued, with the exception of increasing the rate from .070 to $0.0805

Fifth: Rib yardage in narrow work or headings, single shift, shall be paid for at the rate of $0.410

Sixth: Rib yardage in narrow work or headings, double shift, shall be paid for at the rate of $0.540

In witness whereof each of the parties hereto, pursuant to proper authority, has caused this agreement to be signed.

Jewell Ridge Coal Corporation, Huston St. Clair, President, L. C. Johnson, General Manager.

United Mine Workers of America. Charles Payne, William M. Lester, J. H. Shepherd, H. H. Hamm, Walter Strouth, Carl Altizer, H. D. Hampton.

[fol. 51] PLAINTIFF'S EXHIBIT No. 14

Jewell Ridge, Virginia

September 12, 1941.

The agreements known as the Southern Wage Agreement and the Pocahontas-Tug River Agreement, by and between the Pocahontas Operators Association and the United Mine Workers of America, District 17, and the International Union, effective April 1, 1941 until March 31, 1941, inclusive, apply at the Jewell Valley Mine, with the following exceptions:

First: The Shortwall machine rate shall be $0.095 per net ton.

Second: The pick rate shall be $0.802.

Third: The usual draw slate in excess of 4 inches shall be paid for at the rate of .0908 per inch per lineal yard. No deductions shall be made for impurities in the seam or in the bottom.

The above agreements constitute the total agreements between the United Mine Workers of America and the Jewell Ridge Coal Corporation, and are effective April 1, 1941, until March 31, 1943, inclusive.

Jewell Ridge Coal Corporation, Huston St. Clair, President, L. C. Johnson, Gen. Mgr.

United Mine Workers of America. Charles Payne, William M. Lester, J. H. Shepherd, J. A. White, T. E. McDonald, Paul Sykes.

[fol. 52] PLAINTIFF'S EXHIBIT No. 15

United Mine Workers of America

Mine Workers Building, 142½ Summers St., Charleston, W. Va.

January 26, 1942.

Jewell Ridge Coal Corporation, Jewell Ridge, Virginia

GENTLEMEN:

This is to advise that on January 13, 1942, the jurisdiction of Local Union 6167 was transferred from District 17 to District 28.

All business transactions carried on between your company and the United Mine Workers of America will be with District 28 instead of District 17, as of January 13, 1942.

Yours very truly, Geo. J. Tiller, Secretary-Treasurer, District 17, U. M. W. of A.

GJT:w.

Attention Mr. Johnson.

[fol. 53] PLAINTIFF'S EXHIBIT No. 16

Distances of Man Trip Stations from the Portal at Jewell Ridge Mine

No. 4 Mine	4,250 ft.
Lower Middle Creek, where men catch mantrips	6,050 ft.
Upper Middle Creek, where men catch mantrips	9,850 ft.
Jones Fork Driftmount, where men catch mantrips	12,630 ft.
Dispatcher's Office, where men catch mantrips	15,280 ft.
2 North Telephone, where men catch mantrips	17,980 ft.
Bearwallow Drift, where men catch mantrips	18,460 ft.
Parallel Drift, where men catch mantrips and get off mantrips	
5 Right Section, where mantrip stops	23,960 ft.
Parallel Man Station (#1) mantrip stops	23,460 ft.
Parallel Man station (#2) mantrip stops	24,060 ft.
Parallel—14 East, where parties visited	25,460 ft.
Parallel—10 East, where parties visited	24,960 ft.
Bearwallow Man Station	23,660 ft.
2 North Man Station	20,580 ft.
1 North Man Station	19,480 ft.
Gravel Branch Man Station	19,180 ft.

[fol. 54] PLAINTIFF'S EXHIBIT No. 18

United Mine Workers Journal

August 15, 1933

President Lewis' Brief Supporting General Coal Code

The present occasion is one which the United Mine Workers of America have been looking forward to and struggling hopefully towards for the past seven years.

During this period our membership has given freely of their vanishing earnings, and our officers have labored without ceasing to rescue the industry from chaos, and by governmental intervention, to restore it to an orderly, prosperous basis of operations.

For these reasons when the National Recovery Act was projected, we put aside our own special measures, and gave ourselves without reservations to the enactment of this measure not only because of its bearing upon the problems of the coal industry, but also, because it embodied the main hope in the dark days of last spring for the salvation and democratization of our entire economic system.

We believe now that the inauguration of these proceedings today may be made the beginning of the economic rehabilitation of the bituminous coal-mining industry. We trust also that the outcome of our deliberations will mean the restoration of the economic and civil rights of our membership, and the assurance to them of the opportunity to labor at a wage sufficient for the proper support of themselves and their families.

We welcome this meeting also as affording the adoption of an arrangement which will enable our organization to cooperate with bituminous coal operators to the fullest possible extent in applying a program for the stable enlightened progress of the industry, and for rescuing bituminous coal mining communities from economic insolvency and despair. We hope that as the result of our cooperative efforts the workers and other residents of the coal field may have their purchasing power restored and become an important and vital force in contributing to the complete success of President Roosevelt's recovery plans.

The United Mine Workers of America, in supplying a uniform, competitive labor cost for bituminous coal mines, has been the only stabilizing force which the industry has ever had. So far as its efforts were weakened during the period 1925-1932, by attacks made upon it or by the indefensible repudiation of agreements with it, its constructive influence has been supplanted by the law of the jungle which has known neither humanity, profits, nor investors.

The deplorable and diseased economic conditions which immediately developed within the industry, and which the passing years served to intensify, have now so long prevailed that they are practically known to all men. It is

now recognized by the most disinterested and authoritative opinion, both within and without involving the cooperation and supervision of the Federal Government as an umpire to pass upon principles and practices and to insure a planned, coordinated and prosperous basis of procedure.

It will not be necessary for me, therefore, to take the time or burden the record of these proceedings, with an analysis of the existing conditions which prevail in the bituminous coal mining industry. They have been the sub- [fol. 55] ject of numerous investigations by Governmental agencies, the last of which—a subcommittee of the Senate Committee on Mines and Mining—after prolonged hearings on a bill to create a bituminous coal commission, made its report and recommendations as recently as July 7, 1932. The reports of this special subcommittee also took cognizance of and reviewed the results of previous Governmental inquiries. In lieu of any extended exposition by myself, therefore, of conditions which prevail and have prevailed within the industry, I shall submit exhibits as follows:

1 and 2. Report of the subcommittee of the Senate Committee on Mines and Mining on the Bill, S. 2935, To Create a Bituminous Coal Commission (72nd Cong., 2nd Sessions); Views of Mr. Davis, July 7, 1932, and Views of Senator Clark Hayden of Arizona.

3. Section from the Joint Report of the International Officers of the United Mine Workers of America entitled "The Economic Aspects of Coal," submitted to the 32nd Consecutive Constitutional Convention of the United Mine Workers of America at Indianapolis, Indiana, January 26, 1932.

4. Statement of the President, United Mine Workers of America, before a subcommittee of the Senate Committee on Manufactures, on A Bill to Establish a National Economic Council, December 4, 1931; and

5. Statement of President, United Mine Workers of America, to the Finance Committee of the United States Senate on Investigation of Economic Problems, February 17, 1933.

The Attitude of the United Mine Workers of America.

The members of our organization have absorbed the new spirit which has been responsible for the National Recovery

Act with a deep crusading consciousness. Their collective strength and faith have been renewed. Their attitude is one of the most sincere and constructive copartnership. They know that the future will yield great rewards to all of us in the coal industry if we lay aside old conceptions and prejudices, and approach each other in the spirit of the Recovery Act, which says, Come let us reason together, and in the light of past experience and present conditions, let us work out a system of control and procedure for the bituminous coal mining industry that will recognize justly all those directly concerned as well as the public interest.

It was in this spirit that the Code between our organization and the representative operators' group with which we met, was drawn. Both groups of interests desired a code which would be a code of fair competition in the real sense of the term—one that would recognize fundamental needs courageously and evolve a measure that would boldly deal with them. We have attempted to form a program for the industry which would be comprehensive and just to all interests involved, and which for this reason would be worthy of acceptance by all as an assured basis of industrial copartnership and well-being for the industry and our country in the future. Fundamental needs are squarely met. No half-way expedients or temporizing proposals were given favorable consideration. Both parties to our code conferences endeavored to proceed in the same spirit which the President expressed on June 16, 1933, in outlining the policy of the Administration under the National Industrial Recovery Act when he said:

> "Many good men voted this new charter with misgivings. I had part in the great cooperation of 1917 [fol. 56] and 1918 and it is my faith that we can count on our industry once more to join in our general purpose to lift this new threat and to do it without taking any advantage of the public trust which has this day been reposed without stint in the good faith and high purpose of American business."

Procedure of the United Mine Workers

It has been our interpretation of the National Recovery Act from its earliest stages, that it assumed, so far as wages and working conditions of workers are concerned, that the real purposes of the law would be best attained by

collective agreements between representatives of organizations of employes and representatives of employes who had associated themselves together for the purpose of formulating a code of fair competition for an industry. In other words, provisions as to wages and working conditions for a proposed code could not be submitted by employers, or become the subject of investigation and determination by the Recovery Administration, until every opportunity had been given to employers and employes to meet and agree upon maximum hours of labor, minimum rates, and other necessary conditions of employment. I refer to Subsection b of Section 7 of the Act which I shall read.

> The President shall, so far as practicable, afford every opportunity to employers and employes in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under Subsection (a) of Section 3.

This provision is a necessary corollary to Section 7 (a) of the Act which guarantees to employes the right to organize and bargain collectively through chosen representatives.

I may also add—as to this point—that although we realize that Section 7 (a) of the Act directly confers the right to employes to organize and bargain collectively through chosen representatives, we fully appreciate that before the adoption of a code, it does not impose any obligation on the Government to require the recognition by employers of organizations of employes.

On the other hand, the implications of the Act itself are clear and explicit as to the obligations of employers. The Act, after giving employes the right to organize unmolested for the purposes of collective bargaining, provides as a basis for attaining its objectives, a copartnership between

employers and employes. It, therefore, inevitably follows, as night follows the day, that the Act assumes that employers will freely recognize and deal with representatives of employes. The only possible question which could be legitimately raised by employers would be as to the credentials of employe representatives—whether they really represented employes. Once satisfied as to this point, it is the legal obligation of employers under the Act, to accept and to deal with representatives of employes in the spirit [fol. 57] of cooperation which the Act assumes.

Refusal of employers to do this, involves two deplorable conclusions: (1) that employers are refusing to abide by the spirit and letter of the law, and (2) by this refusal, they are not only obstructing the fundamental purposes of the Act to accelerate economic recovery, but what is more serious, they are promoting discord and dislocations, for the reason that they leave no alternative to employes, but the undesirable one, of using their collective strength to force recognition of their organization and its representatives.

At any rate, in the light of this interpretation of the Act, which I think is a sound and correct one, we extended our organization in all coal fields in order to be in a position to deal collectively with bituminous coal operators on a national basis, for the reason that we knew from long experience in the industry that it could only be stabilized and restored to a normal condition through a code which would be national in its scope and its provisions.

The operators with whom we met in conference, took the same attitude as the United Mine Workers toward the Recovery Act and the problems of the bituminous coal industry. They accepted labor as a co-partner in the industry. The union of the mine workers was recognized by the operators. The labor principles and standards of the code were arrived at through collective bargaining between representatives of the operators and of the United Mine Workers of America. This was in accordance with the Recovery Act and as it should be in all codes submitted where facilities for collective bargaining between employers and employes exist.

Boards of Administration

The Administration of our Code when approved is placed in the hands of the Bituminous Coal Industry Board of five members, two persons as representatives of the operators

to be designated by the Industrial Advisory Board of the National Recovery Administration: and two persons as the representatives of labor to be designated by the Labor Industrial Board, and a chairman to be named by the Administrator of the National Industrial Recovery Act.

While the code limits the powers of the general administration board to supervision, it is our opinion that there should be added to the board the function of economic planning for the industry.

The Standards of the Code as to Minimum Rates of Pay

The provisions of our code as to minimum rates of pay, conditions of employment and as to district agreements and differentials are as follows:

Standards as to Minimum Rates of Pay and Working Conditions

The following is submitted as the standard minimum rates of pay to prevail throughout the bituminous coal mining industry:

The minimum pay for track layers, bottom cagers, drivers, trip riders, grippers, water haulers, machine haulers and timbermen shall be $5.00 per day. Helpers and other inside day labor shall be paid at the rate of $4.75 per day. Exceptions to these minimum rates are trappers, spraggers, switch throwers, oilers and couplers. The existing amounts [fol. 58] by which wages in the higher priced classes, including strip mining, exceed the classes named shall be maintained.

Outside workers shall be paid a minimum day wage of $4.00 except for slate and sulphur pickers. Outside workers are those workers employed incidental to plant operation. The existing amounts by which wages in the higher priced classes named shall be maintained.

It is recognized that within coal producing districts wages and working conditions for mine workers shall conform to the minimum rates of pay herein established and be uniform within each district; that they shall likewise be uniform as between districts to the extent necessary to provide fair competitive production costs; and to that end each of the coal districts is directed to submit within fifteen days from the effective date of this code for the consideration and approval of the National Industrial Recovery Ad-

ministration its supplemental code setting forth its minimum rates of pay to mine workers employed on a tonnage basis in pick mining, hand loading, undercutting, solid shooting; and also mine workers employed in strip mining and mechanical mining, to conform to the basic rate of $5.00 for inside labor, and where the mine workers in any such district are organized and willing to bargain collectively for such wages and working conditions, to report what, if any, such mutual agreements have been made.

Minimum rates are subject to the following adjustments:

(a) In those districts south of the Ohio River and east of the Mississippi River, and in the Morgantown and Fairmont districts of West Virginia, the minimum day rates may specify a differential below the basic rates of not to exceed five per cent.

(b) It is recognized that in the states of Oklahoma, Arkansas and Texas special conditions exist, and authority is given for joint agreement between the representatives of the mine workers and the operators on the question of proper differentials.

(c) Existing higher differentials established in Colorado, Utah, Wyoming, Montana and Washington during past years by reason of higher living costs shall not be disturbed.

Standards as to Other Conditions of Employment

A: It is recognized (1) that employes shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employe and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

B: Except as hereinafter provided, all coal mined on a tonnage basis shall be weighed and paid for on the basis

of 2,000 pounds ton. The miners shall have the right to a checkweighman, of their own choosing, to inspect the weighing of coal; Provided, that where mines are not now equipped to weigh coal a reasonable time will be allowed to so equip such mines; and provided, that in any case where on account of physical conditions and mutual agreement [fol. 59] wages are based on measure or other method than on actual weights, the miners shall have the right to check the accuracy and fairness of such method than and by a representative of their own choosing.

C: Wages shall be paid semi-monthly in lawful money or par check at the option of the operators. Deductions may be made from the pay of employes for rentals, house coal, powder, mine supplies, store accounts, dues to the labor organization of employes, and for other legitimate items; but no deduction or discount shall in effect lower the actual rates of pay provided by the code.

D: Employes other than maintenance or supervisory men or those necessary to protect the property, shall not be required as a condition of employment to live in homes rented from the employer.

E: No employe shall be required as a condition of employment to trade at the store of the employer.

F: District agreements shall be made, not inconsistent herewith, dealing with local or district conditions to secure continuity of work, fix fair compensation for yardage and deadwork, promote care in the preparation of coals for the market, provide the machinery for settling disputes, and safeguard the respective interests of employers and employe.

G: No person under sixteen years of age shall be employed inside a mine.

H: The term "employe" as used in this code shall not include a member of the executive, supervising and confidential force of the operators.

[fol. 60] United Mine Workers Journal

September 1, 1933

Brief Submitted by President Lewis for Coal Code

Conditions of Employment

The first condition of employment set up is those provisions of Section 7A of the Recovery Act that the law requires to be incorporated in the code, but it is our view that the law is not complied with merely by the perfunctory insertion of these provisions in the code. Our code regards this law as setting up the standard of the relations that must prevail between the employer and the employe; and that it requires that employer to recognize the right of his employes to freely organize and bargain collectively through his own representatives for his wages and working conditions.

Other conditions of employment upon which we have agreed with the operators are embodied in the code, and, in the main, have been established through the precedents of many years, and represent the best practices of the industry.

Provision is made for the miners to elect a checkweighman to work along with a similar representative of the mining industry, for the purpose of auditing the output of tonnage workers as it comes from the mine. In mines where output is measured by other standards than weights, the miners are also given the right to check such methods through representatives of their own choosing. Such representatives of the miners are paid by the miners through the check-off, or by pro-rate deductions each pay-period from earnings.

The "check off" system which has prevailed in this country for many years, indeed so far as the records go, was originally inaugurated by the operators to cover house rents, miners' supplies, store accounts and similar items. The practice, in reality, insures greater cooperation and efficiency from employes, and has never been opposed in this country by any other operators than those who have sought to weaken labor union organization. In our agreement as to working conditions of the code, we have included, in addition to dues to labor organization, deductions for employe rentals, house coal, powder, mine supplies, store accounts, and other legitimate items.

Because of the myriad of differences in the physical occurrence of coal and conditions of mining, we have also agreed that district agreements may be made as to working conditions which are not inconsistent with general standards of working conditions embodied in the code. Also district arrangements for the settlement of industrial disputes and maintaining continuity of work are authorized.

It is further agreed upon in the code that employes shall not be required as a condition of employment to live in houses rented by employers or to trade at stores conducted by employers. A constant source of friction in mining communities is thus avoided.

Competitive Wage-Cutting Within the Industry—1925-1933

The provisions of our code jointly agreed upon as to rates of pay of employes are very moderate.

Before considering the code rates of pay for mine workers [fol. 61] it is necessary to realize that as the result of competitive wage slashing within the industry prior to 1930, and its intensification by the depression since 1929, the wage standards of all the bituminous coal workers reached unprecedentedly low points in March and April of this year. In the latter month, it will be seen by referring to the exhibits submitted, aggregate pay rolls as shown by the United States Bureau of Labor Statistics were 74.4 per cent below the 1929 disbursements, and the average weekly earnings of bituminous mine workers of all classes was only $10.82 as compared with $22.00 per week in the same month of the year 1929. Actual daily earnings had followed the same downward course, being only 53 per cent in 1933 of what they were in 1922. In many localities rates were even lower.

The most recent reports of the Bureau of Labor Statistics show that while the state of Illinois in 1933 was maintaining a minimum rate of 50 cents for inside mine workers, eastern Kentucky mines were at the same time paying a minimum rate of 15.6 cents per hour for the same class of workers; western Kentucky and western Pennsylvania, 18.8 cents; northern West Virginia, 25 cents; and southern West Virginia, 20 cents per hour.

As to outside workers, the rate in Illinois in 1933 was 30 cents per hour; 15 cents in eastern Kentucky; 19 cents in western Kentucky; 18 cents in western Pennsylvania; 14

cents in northern West Virginia, and 18 cents in southern West Virginia.

As the Bureau of Labor Statistics shows only an average of 26.1 hours worked per week during this period, the ghastly inadequacy of the earnings of mine workers at the present time becomes at once apparent.

The average rates for all classes of outside workers in 1933 including many classes of skilled and semi-skilled workers—as shown by this official report were equally inadequate, ranging from 49 cents per hour in Illinois to 28 cents per hour in western Kentucky and northern West Virginia mines. The average rates of pay per hour for underground workers as a whole in 1933 ranged from 59 cents per hour in Illinois to 31 cents per hour in eastern Kentucky and northern West Virginia.

In contrast with these deplorable wage rate conditions, a minimum wage rate in a code, however low and inadequate it may be, may represent a considerable advance over the indefensible minimum rates which have prevailed this year in certain districts of both the North and the South. In forming minimum rates for our code, we have, therefore, agreed upon rates which are approximately those now prevailing in the unionized fields. (I may say here by way of explanation that in referring to fields as unionized and non-unionized, I have reference to conditions which prevailed before the passage of the National Industrial Recovery Act. All fields have been unionized since that time. These union rates selected for the code are barely adequate and exceedingly low when measured by normal standards of compensation. If adopted, they will add very little to the purchasing power of areas previously unionized, but, on the other hand, they will bring non-union fields in the South and North up to more acceptable living standards.

[fol. 62] The Conservation of Minimum Rates Proposed

As I have already stated, the minimum rates upon which we have agreed are very conservative. As a matter of fact, under normal conditions, they would be entirely inadequate, especially when compared with budgetary studies of the minimum requirements of wage earners' families for the maintenance of decent living conditions. This may be quickly seen by reference to our Exhibit Number 8, which I have submitted.

During the past two decades the principle of the living wage has been quite generally accepted. Moreover, a series of studies by responsible authorities of the amount of income necessary for a living wage has placed the subject on a factual basis. We now know, with sufficient accuracy for practical purposes, the approximate income which a family must have in order to maintain what, for lack of a better term, may be referred to as a minimum standard of living for American wage-earners.

This subject was gone into quite thoroughly by the United Mine Workers of America in their appearance before the Anthracite Board of Reference in December, 1932. As then pointed out, it is not necessary to review at length the whole series of minimum budget studies which have been made, especially since 1920, in order to obtain a fair picture of the subject. For present purposes, therefore, it would seem difficult to call attention to the six outstanding studies, made since 1920, and made in all cases by agencies of accepted authority. These six are:

1. United States Bureau of Labor Statistics: Minimum budget for a coal mine worker's family in eight bituminous coal towns of Pennsylvania and Ohio. Study made in 1920, at the request of the United States Bituminous Coal Commission.

2. Bureau of Municipal Research of Philadelphia: Minimum budget for a workingman's family in that city.

3. Heller Committee of the University of California: Minimum budget for a workingman's family in that state.

4. Visiting Housekeepers' Association, Detroit: Budget for the use of social workers in determining relief for dependent families.

5. Council of Social Agencies, Chicago: Budget prepared for the use of social workers in determining relief for dependent families.

6. California Civil Service Commission: Budget study for purpose of establishing fair wage scale for laborers in employ of the state.

When these budgets are brought down to date by applying the Cost of Living Index of the Bureau of Labor Statistics, all practically agree as to minimum family costs.

In order to be entirely conservative, however, comparison between a "living wage budget" and the possible earnings under the wage rate structure of the bituminous coal code may be limited to the lowest cost budget of those listed—namely, the budget compiled by the United States Bureau of Labor Statistics, of which the annual cost for a family of five was found to be $1,353.00 in June, 1933. This is particularly appropriate as this budget is concerned solely with the families of bituminous coal miners.

These tables and the accompanying charts in our exhibits show clearly that the minimum wage rates proposed in our Bituminous Coal Code will fall short of the require-
[fol. 63] ments of a living wage, even if the workers have opportunity for employment for 250 days per year, and even for those receiving the highest minimum of $5.00 a day. Thus, the $5.00 per day man, with 250 days of work can only earn $1,250 a year, while the minimum budget for a living wage, at the present level of cost of living, requires $1,353, thus creating a deficit of $103. If the $5.00 per day man has opportunity for only 225 days work, his annual earnings would be only $1,125, or $228 short of the minimum budget. It should be mentioned also, that these figures are for gross earning possibilities. Deductions for supplies would reduce net annual earnings at least $100 more and add the same amount to deficits below budgetary standards.

As regards the outside laborers, at $4.00 per day, annual earnings would be only $1,000, even on a 250-day basis—as against the minimum budget cost of $1,353. The laborers in the southern districts with minimum rates of five per cent less than those in the other districts would be correspondingly worse off as regards a living wage.

These computations are extremely conservative, especially as the minimum budget is computed on prices as of June, 1933, when prices were just beginning to increase after a long downward swing. To the extent that prices and the cost of living continue to increase, the discrepancies between the minimum wage rates established in the code and the amounts necessary to meet a minimum living budget will comparatively increase.

Rapid Increase in Prices and Cost of Living Inevitable

There is, in all probability, not a single intelligent observer of current events who does not expect a sharp and

fairly long continued upward movement in prices. There are several clear-cut reasons for this attitude. First, prices have been abnormally low, in some cases below the cost of production. Second, the abandonment of the gold standard by most of the countries of the world, led to a sharp appreciatoin of prices in the international markets, and this was reflected, in part at least, in the domestic markets. Third, the frank acceptance of a price inflation policy by the administration, with the granting of full powers to the President will exercise these powers. Finally, the carrying out of the National Recovery Act, resting as it does upon the twin principles of shorter hours and higher wages, will inevitably lead to increased costs of production and thus to higher prices.

The only alternative would be to hold down costs of production by further mechanization and labor displacement, and this is contrary to the fundamental purpose of the Recovery Act, which is to assure increased employment. Ultimately, of course, we must seek to profit from all methods which increase the efficiency in industry and make work less laborious, but as an immediate policy, and as I believe the Recovery Administration fully realizes, a too great stimulation of efficiency and labor displacing methods would be disastrous.

For all of these reasons, an increase in the price level is to be anticipated. Already the movement has begun. The wholesale price index of the United States Bureau of Labor Statistics, from its low point of 59.8 in February last had risen to 68.9 in the week of July 15th, an increase of no less than 15.2 per cent in five months. There is probably no precedent for such a rapid rise in wholesale [fol. 64] price, a rise which affected all classes of commodities. There is no doubt that some of this increase was speculative and unwarranted, and there will undoubtedly be temporary recessions, but there is also no doubt that the general movement will be steadily upward.

Retail price always lag behind wholesale prices in a rising market, but retail prices have already begun to respond. Thus the index of food prices at retail, as compiled by the United States Bureau of Labor Statistics, after reaching a low point of 90.4 in April last, shot upward to 93.7 in May and to 96.7 in June, an increase in two months of almost 7 per cent.

Even in the case of the general cost of living—which includes many items which are less responsive to sudden price changes than such items as food—the upward movement is under way. The Bureau of Labor Statistics' index of cost of living is of no service here as it is compiled only every six months, but the monthly cost of living index of the National Industrial Board rose from 71.5 in April last to 72.1 in May and to 72.8 in June.

It is perfectly clear, therefore, that we may look forward to an increased price and cost of living, well above the present level. How far above, is a matter of speculation. If, however, the earning capacity of the workers is to be restored even to the pre-depression level, there is every reason to believe that the price and cost of living level will also be restored to substantially the same level. Especially is this to be expected as the administration's economic policy, while never stated except in agricultural recovery, apparently contemplates the restoration of the pre-depression level of wholesale prices throughout mining and manufacturing.

If these things should come to pass, as they almost certainly will, the workingman may anticipate, in the near future, an advance in his present cost of living from an index of about 128 (using the Bureau of Labor Statistics' figure) to one of above 170, or an increase of from 30 to 35 per cent in present levels.

Differentials

There is no justification for the maintenance of a system which permits the present differentials, either in or between districts.

The tendency of recent years has been to aggravate further this condition, and as a consequence, develop a situation that has destroyed every reasonable degree of fair competition. It has also contributed largely to the degradation of miners' wages.

There never has been a scientific study of this question. As matters now stand, the established differentials in many instances have been the source of continued discord among miners and operators alike.

An example of the inequitable and arbitrary application of differentials is to be found in the Pittsburgh District, where in the year 1902 a geographical line was drawn from a point on the Youghiogheny River, known as Suterville,

extending to Belle Vernon, Fayette City, Charleroi, Ellsworth and Marianna. All coal mined south and southeast of this line was given the benefit of a pick mining differential amounting to 10¢ per ton below the rates paid for pick mine coal north of this line. A corresponding differential to the advantage of the same group of operators, was granted for hand loading and machine cutting. No consid- [fol. 65] eration was given to the thickness of the vein, and there was no reason for any claim for lower tonnage rates.

On the contrary, many of the producers south of the line enjoyed, and do still enjoy, the benefit of river transportation, the freight charges of which are considerably less than are paid by operators in the so-called thin vein, who ship only by rail. Despite that fact, the operators producing coal in the so-called thick vein enjoy a differential in pick and machine mining below their competitors in the Pittsburgh District, yet it is notoriously true that much of the coal mined in the so-called thick vein territory is about the same in thickness as is the so-called thin vein district.

Operators suffering for years from the effects of these differentials have sought in vain to make the tonnage rates the same throughout this area, and mine workers have complained, even to the extent of striking, against a continuation of this abuse.

With relation to differentials obtaining in districts south of the Ohio River, the United Mine Workers of America for years have contended that the disparity in day and tonnage rates has wrought incalculable damage to the industry as a whole; this was particularly true of the period when the United States Mine Workers had wage agreements with operators producing 70 per cent of our national tonnage. Here is an instance where interests producing 30 per cent of the nation's tonnage, in an effort to secure more markets, scuttled and destroyed the industry by wage and price slashing.

The upward trend of production in West Virginia and Kentucky within recent years indicates the extent to which inexcusable differentials favoring those states have wrought havoc to the industry. The accompanying table prepared by the Bureau of Mines known as Exhibit 8a, gives a factual picture of the disastrous effects of unfair, arbitrary and inexcusable wage differentials upon the structure of the bituminous coal industry.

Lack of uniformity of wage and tonnage rates between competing districts has pauperized the miners and bankrupted the operators. The story of the ills of bituminous coal, the age of low wages and cutthroat competition, are all directly interwoven with discriminatory differentials in wages.

The report of the Bureau of Labor Statistics, showing the trend of hourly rates paid miners in various states for the years 1929 to 1933, shows a relative evening-up of day wage and tonnage rates during those years. Exhibit 7. Despite this fact, the districts comprising West Virginia and Kentucky have been able to sustain easily their position in the markets of the country.

This problem of differentials between the North and South is further complicated with sentimental considerations.

It is an easy thing to charge that the United Mine Workers of America is interested only in promoting the operations of the North; but it must be apparent that our organization must concern itself just as much with the welfare and with protecting the working time of our members in the South as those in the north. Throughout this entire southern region all of the eligible mine workers are enrolled in the United Mine Workers of America, and their opportunity for employment and earnings must be protected there as elsewhere.

The chief interest of the United Mine Workers of America [fol. 66] is to stabilize the bituminous coal industry by establishing rates of pay for day and tonnage workers that will enable the mine workers of the nation to secure reasonable wages and work opportunities, and at the same time permit the development of a condition within the industry that will tend to promote fair competition between the producers of the several states.

In consideration of all these factors, and in the hope that we may be able to establish fair relative rates of pay in and between competing districts, and in furtherance of our conception of the provisions of the National Recovery Act; that it is to promote a system of fair competition in the bituminous coal industry, we have agreed to an arrangement which will permit the establishment of a five per cent differential in favor of northern West Virginia and all of

the territory south of the Ohio and east of the Mississippi Rivers.

As to the question of differentials within districts, attendant upon tonnage rates, it is the expressed desire of the United Mine Workers of America that in the district conferences created for the purpose of establishing tonnage rates comprehending a condition of fair competition within districts and with competing districts, that the conferees should apply themselves most diligently to the task of eliminating these absurd internal differentials, and make secure to the tonnage worker a minimum wage at least equivalent to the minimum rates for underground day workers.

It may well be that it is beyond the possibilities of a general code to have set up the various tonnage rates of each district; but a general code such as we submit can fix the standards by which the districts shall in supplementary codes report to the administration these various tonnage rates. The districts have for years made such rates, and are prepared to make them now. The only question is what standard shall they follow. These standards are set up in our code: that the tonnage rate shall provide a competitive equality of production cost and secure to the tonnage worker a minimum wage equivalent to that received by inside day labor.

Whether or not such supplementary codes present rates conforming to the standards of this code can be easily determined by the experts and statisticians of the administration. There could be even an easier solution, providing the Recovery Administration, in the exercise of its powers, directed the representatives of labor and the operators of the various districts to prepare and submit for the consideration of the Recovery Administration while in the city of Washington, their joint schedules of minimum tonnage rates.

A formula that could be accepted as a standard for all seams of coal varying in thickness from five feet and over to be paid for—

Drilling by hand and loading in wide work, 58¢ per ton.

Undercutting in wide work, 12¢ per ton.

The definiteness of this rate for undercutting could perhaps be better established when consideration is given to the kind of machine that might be used for undercutting purposes. This would be in the interest of equity and that section of the Act relating to standard minimum wage rates.

In the establishment of tonnage rates for all seams less than five feet in thickness conferences could arrive at rates properly correlated to the minimum tonnage rates for all seams less than five feet set up here as a formula. However, it will be found that the tonnage rate established for drilling by hand and loading in all seams five feet and over will directly affect approximately 80% of our national tonnage. [fol. 67] The problem of the rate for pick mining can be resolved in the same manner, using 88¢ per ton as a basic rate to achieve for the pick miner the minimum wage of $5.00 per day.

It is understood that the application of these various tonnage rates relates solely to a ton of 2,000 pounds on a mine run basis.

The figures as to tonnage rates that I have used do not reflect the position of the United Mine Workers of America upon this question, but are merely a formula. The final determination of such rates can only be arrived at when maximum hours of labor have been set up in the code.

In the competitive territory comprising Colorado, Utah, Wyoming, and Montana and Washington, the maintenance of existing rates is jointly recognized in our code.

No Sectional Differences in Cost of Living

In the course of the various conferences incident to the framing of codes and in the subsequent hearings on these codes; much has been said regarding the differences in cost of living, especially as between the North and South. In the bituminous coal code, the labor provisions of which we helped to draft, and are willing to accept on all points except as regards the weekly working period, we have agreed to a 5 per cent differential for the southern fields. In doing so, however, we are merely making a concession to a traditional practice, and do not admit that such a differential is justified by differences in cost of living.

Regarding this matter I have gone into all the available evidence, and as a result I wish to make two emphatic statements: First, that there is not the slightest evidence that the cost of living is lower in the South; and second, that such evidence as exists indicates that very possibly the cost of living, for an equivalent standard of living, is higher on the average in southern than in northern communities.

Those who take the opposite position are confused by the fact that southern workers, on the average, at present live on less because they receive less than the northern workers. But this proves nothing as regards the relative cost of living. What we want to know is whether there is any difference as between the sections in the cost of maintaining the same, or, at least, an equivalent standard of living. The only way to determine this would be actually to "price" a given budget of household supplies in the two sections, making allowances (if there are any such) due to climate, etc., but taking care that the same general average of well-being is maintained. For instance, it would be proper to make allowance for all lower fuel consumption in a tropical community as compared with a far northern community, or to make allowance for the fact that laundry costs might be higher in the tropical community, but it would be obviously unfair to make any allowance for a lower milk consumption by children in the South, just because milk prices are higher.

No such studies, however, have been made for the United States, and in all absence thereof we must fall back on such data as we have regarding relative prices in the two sections. These data, while far from complete, are sufficient, I believe, to establish the fact that prices for the same types of articles are now lower in the South than in the North.

[fol. 68] Take, for instance, the matter of retail food prices, and these are of primary importance because food constitutes in normal times between 30 and 40 per cent of the lower paid workers' living budget, and in times of depression like the present, may run as high as 60 to 70 per cent of his total expenditures. The United States Bureau of Labor Statistics publishes monthly figures regarding the retail prices of all the important figures and items of food for a group of representative cities. I have had these prices, as thus published, by the bureau as of June 15, 1933, weighted according to the importance of each item in the working family's budget also as compiled and published by the Bureau of Labor Statistics. The results give the total cost of what may be called the Bureau of Labor Statistics' market basket of supplies in each of the fifty-one cities. The average cost for all the cities is found to be $25.147. The cost for the thirteen southern cities, ranging southward from Virginia to Texas is $250.65. In other words, these official figures indicate that the cost of food, of the

same quality and amount, is almost exactly the same on the average in the South as in the North. Considerable differences are shown in the tabulation as between individual cities, but these differences aren't sectional in character. Thus the highest cost city as regards food is San Francisco and the lowest, Detroit.

Turning next to rents, which ordinarily constitute about 15 per cent of the worker's family budget, no recent data are available. However, in the 1918-19 study of Cost of Living by the Bureau of Labor Statistics, figures are given to show the average rent per room for houses and apartments in ninety-two cities and towns widely distributed as regards location. Rent per room is a much better standard for measuring housing cost than the rent of a whole house, as variations in the sizes of houses are thus eliminated. Since 1918-19 rents have, of course, changed, but there is no reason to believe that the changes have been very different as regards different communities. Therefore, in the absence of later date, these figures may be taken as indicative of the rent situation as between sections of the country.

A tabulation has therefore been made of the average rent per room in the ninety-two cities referred to as published in Bulletin 357 of the Bureau of Labor Statistics. The tabulation has been limited to houses, as apartment living is infrequent in many communities. Also because of the large number of communities covered in the report, the tabulation has been made by three sections—northern, southern and western—the divisions being those commonly employed, with Chicago included in both the East and West. The results show that the average rent per room per annum was as follows: South, $33.60; North, $32.24; and West, $39.30. Thus the rents per room in southern workers' families were lower, on the average than in the West, although considerably higher than in the North.

The Bureau of Labor Statistics compiles semi-annual figures regarding the prevailing prices of coal, gas and electricity in the same fifty-one cities for which it gathers food prices. For electricity, no comparisons can well be made because the selling unit is not uniform in different cities. In the case of coal, the existence of two types—anthracite and bituminous—for which we have prices, but not relative consumption, also makes comparison by cities difficult. In the case of gas, however, comparison may be made on the

basis of 3,000 cubic feet consumption. When, on this basis, tabulation is made of the prices of June 15, 1933, it appears [fol. 69] that the average price for the thirteen southern cities was $1.10 as against $1.04 in the North and $1.05 in the West. The South, in other words, is paying more for gas than the other sections of the country, and, as gas is used primarily for cooking, there is no reason to believe the consumption per family differs as between sections.

Summing up, it appears that food prices in the South are about the same as in the rest of the country; that rents are higher than in the North but lower than in the West; and that at least one important item of fuel—gas—is considerably higher in the South than elsewhere. Assuming gas to be representative of the fuel and litigating group of family budget expenditures, the above items constitute such a predominant portion of the workers' expenditures (certainly 60 per cent and in these times of depression possibly 80 per cent) that the other items, for which we have no information regarding relative prices or costs, are of relatively minor importance. We do know, however, that most clothing items tend to be higher in other sections of the country than in the north because of the added shipping charges. As regards possible differences in the cost of the clothing budget because of differences in climate, it is evident that no such differences apply in the case of the bituminous coal mines. West Virginia and Kentucky, for instance, have just as rigorous a climate as Illinois and Pennsylvania. Also as regards the items which are usually classed as "miscellaneous" in budget studies, such as carfares, moving picture tickets, medicines, newspapers, etc., there is absolutely nothing in reasons for believing that they are lower in the South than in the North or West.

[fol. 70] United Mine Workers Journal, September 15, 1933

President Lewis's Brief for General Coal Code

Cost of Living of the Colored Workers

A final point on the subject of cost of living. Most of the argument in favor of making a differential in wages against the south rests on the prejudice against a negro worker, and on the utterly mistaken notion that the colored worker has a lower cost of living than the white worker. This is the same confusion of thought as that mentioned

above. The negro worker, on the average, lives on a lower level of living than the white worker simply because his income is less. His desires, his needs, and his costs are identical with those of the white workers. Indeed, there is reason to believe that in the matter of housing, because of the formal or informal segregation of the colored population in most communities, the rents exacted from colored tenants are higher than those charged the whites. This was indicated in the 1918-19 cost-of-living survey by the bureau of labor statistics. A table published in the September, 1920, issue of that bureau, shows separately the rents paid by white and colored tenants for twelve cities. It there appears that the average rent per room paid by white families for houses was $38.26 and for flats and apartments, $45.20, as against $33.50 and $38.55 respectively for colored tenants, the rents for colored thus being somewhat lower than those for whites. Further analysis of the data show, however, that the housing of the colored was far inferior to that of the whites. Thus, of the houses and flats occupied by whites, 55.9 per cent had bathrooms and 64.7 per cent had inside toilets, whereas in the case of the colored houses and flats, only 21.3 per cent had baths and only 25.1 per cent had inside toilets.

Lack of Agreement as to Hours of Work

The representatives of the operators and the United Mine Workers in formulating a code were unable to reach an agreement as to the length of the workday or work week. The operators insisted upon a workday of eight hours and a four-day or thirty-two-hour workweek for one-half of a twelve-month period, and a five-day or forty-hour workweek for the remaining half of the year, with the further provision that any operator might elect to operate any mine on a schedule of employment of not to exceed thirty-six hours per week throughout the twelve-months' period. The mine workers were equally insistent that the six-hour day five days per week should be established for the industry. The outcome was that the schedule of work hours proposed by the representatives of the operators was placed in the code with an explanatory note stating that the mine workers reserved the right to continue their fight to secure a six-hour day, five-day week when the code came up for consideration by the national recovery administration.

An analysis of the existing and authoritative data bearing upon the matter of hours, led the mine workers to the firm conclusion that the existing workday of eight hours and the existing work-week should be reduced for three main reasons:

1. Eight hours' work underground "at the face" is excessive.

2. A reduction in the length of the workday would decrease accidents and add to the health and efficiency of mine [fol. 71] workers.

3. A maximum work-week not to exceed thirty hours is absolutely necessary in order to stabilize operations of the industry upon the basis of a reasonable field of employment and earnings.

We have prepared exhibits relating to each of these points, which I shall now submit, as follows, a basis for a brief discussion of the matters:

Exhibit No. 9—Hours of labor of bituminous coal mines.

10—Hazards in the bituminous coal mining industry.

11—The thirty-hour week and employment stabilization.

12—Statement of Philip Murray, vice president, United Mine Workers of America, before the senate judiciary sub-committee considering the Black Bill for establishing the six-hour work day.

Existing Hours of work Are Excessive.

Perhaps the most striking fact in connection with the question of hours or work is that while the great majority of mines have established the eight-hour policy, the percentage of employes in eight-hour mines has steadily decreased. Thus, while in 1920, 97.1 per cent of the employees were in eight-hour mines, the percentage declined almost without interruption, and in 1931 was only 92.0; whereas the percentage employed in nine-hour mines rose from 2.0 in 1920 to 6.7 in 1929 and was almost as high (6.1) in 1931.

The workday of eight hours, which generally prevails, however, in the industry, it should be borne in mind, refers

to the time to be spent at the face of the coal vein, and does not include the entire period underground. The United States bureau of labor statistics has, at two-year intervals, made studies of the actual hours of work at certain pay roll periods. Such studies are available for the years 1922, 1924, 1926, 1929 and 1931. In the case of the miners and loaders, who are underground employes and constitute about two-thirds of the total wage-earning personnel, distinction is made between "the time spent at the face" and "the time spent in the mine." The distinction rests upon the peculiarity of the coal-mining industry that in most mines it is a very considerable distance from the mouth of the mine to the actual working places.

Four points should be especially noted from the results of these inquiries as set forth in our exhibits:

First: That in the case of miners and loaders both the time spent at the face and the time spent in the mine, had sharply increased over the ten-year period, 1922-1931. Thus, in 1922, the average time at the face was 7.7 hours, while by 1931 this average had risen to 8.1 hours; and similarly, the average hours in the mines rose from 8.3 in 1922 to 8.8 in 1931.

Second: That there is a very considerable difference between the time spent at the face and the time in the mine, this difference being as much as eight-tenths of an hour (or forty-eight minutes) in 1929. In other words, the under-[fol. 72]; ground workers in addition to the time at their work places spent the major part of another hour in the trip from and to the mine mouth.

Third: That the time spend underground varies according to occupation. In no case in 1931, according to the bureau of labor statistics' reports, was it less than 8.7 hours per day for any of the occupations, but in some cases it was considerably higher, being 9 hours and 30 minutes for machine loaders and cutters, 9 hours and 40 minutes for contract loaders, and 10 hours and 10 minutes per day for machine cutters' helpers.

Fourth: This variation becomes even more striking when it is analyzed according to states. In 1931, in Alabama, Tennessee and Virginia, machine cutters were in the mine in excess of 10 hours per day and their helpers more than 11 hours per day; machine loaders in West Virginia worked

11 hours and 18 minutes; in Ohio, 10 hours and 10 minutes; in Kentucky, 9 hours and 40 minutes; and in Illinois, 9 hours.

In general, it may be said that during the past ten years the hours of work "at the face" and in the mine have increased.

Shorter Hours Mean Employment Stabilization

Moreover, hours of work within the industry must be reduced to thirty per week in order that surplus labor may be absorbed and employment stabilized on a basis which will mean decent earnings for all available men in the mining districts.

As the result of a careful study of all mining districts, made by the representatives of the United Mine Workers in July, 1933, it is evident that there were 554,700 men available and desirous of securing employment in the mines. Our exhibits show that for the five years preceding the depression, or the period, 1925-1929, the average annual output of the bituminous mines was in round figures 529,000,000 net tons. The number of men employed in 1929 was 502,993. It may be said, therefore, that the normal annual demand for coal in 1929 was approximately 500,000,000 tons which required 500,000 men to produce. The output per men per pay in 1931 was 5.30 tons.

As the industry of the United Mine Workers discovered 554,700 men available for work in the mining fields in July, 1933, it is evident that there was an excess or surplus manpower available in the coal communities at that time, on the basis of the normal production requirements of the industry, of 54,700 men. As compared with the subnormal conditions now prevailing the surplus of men is more than 200,000. In the light of these conditions it is apparent that the standard workday must be reduced at least two hours so that those now idle may be re-employed, including the 54,700 in excess of the normal working force of 500,000 workers who are also awaiting the opportunity of work.

On the basis of the foregoing analysis, if the 32-hour and 6-hour week and 8-hour day as advocated in our code by the operators should be adopted, it would yield at the minimum on the basis of the 1931 tonnage per man and of a normal output of 500,000,000 net tons only 200 working days or 40 weeks' work per annum for the 554,000 men

shown in the investigation of the union to be now available for work.

[fol. 73] On the other hand, if the contention of the operators who were members of our code conference be accepted, to the effect that the adoption of a six-hour day would be attended by no gains in efficiency, but by a loss in output corresponding to the reduction in the length of the workday for eight to six hours, production on a six-hour day would proceed upon the basis of four tons per man per day.

There are now available for service in the industry, according to the returns collected by the union, 554,000 men. On the basis of 4 tons per man per day the daily production would be 2,216,000 tons. This daily output keyed to an annual production would yield 554,000,000 tons for 250 days per year working time.

Of course, it is not expected, nor is it possible, that all of the available men could work each of the 250 days. Varying conditions incident to coal mining prevent this, such as accidents, sickness, and gas, water, falls of roof and other physicial causes. The normal idleness due to these causes can be conservatively estimated at 10 per cent—of 55,400 of the 554,000 available men—thus giving steady employment to about 500,000 men daily, who would produce 2,000,000 tons each day and 500,000,000 tons for 250 days' work each year.

On the other hand, there are many other factors entering into the situation which offset or counterbalance each other. The output per man per day steadily increased throughout the period, 1925-1931, and amounted to a total advance in man-day productivity of 7 per cent during these years. It is not reasonable to assume, therefore, as is done by the operators, that a change from an eight to a six-hour workday would not be accompanied by some gain in hourly productivity. An estimated gain of 5 per cent would at least be ultra conservative. It would probably be at least 10 per cent. The mine worker, because of shorter hours, could and would obviously work with greater intensity. The history of all changes to shorter work days has been that productivity per man-hour increased.

It is also clear that the record of 10 per cent of the operating forces being idle each day in the past from certain involuntary causes, might be considerably modified by a shorter work-week. Mine workers would be more fresh and alert and more able to escape injury if accidents should

occur, and in a better physical and nervous condition to prevent the occurrence of accidents. A shorter work-week would also stimulate management to a higher degree of supervision and lead to the elimination of conditions which have caused loss of working time under the longer work days of former years.

Moreover, the total number of men now shown—at a point near the lowest depths of the depression—to be available for work, may very likely be supplemented by a return of former mine workers to the mining districts when industrial conditions become more active.

All of these possibilities tend to counterbalance or supplement each other. If we assume, for instance, that a change from an eight-hour workday would result only in a 20 per cent loss in productivity per man per day, which would be quite conservative, and only *in* 7½ per cent of the operating forces would be away from work each day by reason of a change to six hours on account of sickness, accidents, or other voluntary causes, and, if we should assume further that under a shorter workday notwithstanding any in- [fol. 74] creased productivity per man per hour would absorb men returning to the mining districts as industrial activity and the demand for coal developed, all men available for work in the mining districts would be steadily employed from 225 to 250 days each year.

Furthermore, we may assume that as time goes on the adoption by other states of the law of Pennsylvania prohibiting underground workers under eighteen years of age will reduce accidents and also place a restriction upon the number of men in the mining districts available for employment.

It is also admitted by opponents of the six-hour day that increased use of oil, natural gas and hydro-electric power has made definite inroads into the coal markets of the nation, and that the improved efficiency in the combustion methods on railroads, in steel mills, public utilities, and manufacturing establishments has reduced materially the coal requirements of the nation, and that due to these causes we can hardly expect to get back on an annual 5,000,000,000 tons basis of production for bituminous coal mines.

If this be true, then the opponents' argument lends strength and support to the five-day week and the six-hour work-day.

In conclusion it may be said that the five-day week, six-hour day will extend employment to all available men in the industry. It will check overproduction and place the industry in a position to produce at least our national coal requirements. It will eliminate, so far as practicable, the evils of cutthroat competition. It will stabilize costs and maintain wages at reasonable levels. It will enable the producers to secure fair returns on their investments. No other remedy can yield such beneficial results.

The eight-hour day will continue the present chaos. It will not create more employment. Overproduction is bound to trail in its wake and the consequent evils of cutthroat competition, low wages and bankruptcy are bound to accompany it. Rationalization of the industry can only come through the six-hour work-day and the five-day work-week.

Accident Rates and General Hazards of the Bituminous Coal Mining Industry

The accident hazard of bituminous coal mining may best be shown by comparing the accident rates in this industry with the accident rates in other industries. This may be done from the compilations in our exhibits taken from the reports of the national safety council. These studies show that, with the single exception of anthracite mining, bituminous coal mining is the most hazardous of all the industries covered by the national safety council's studies. Thus bituminous coal has an accident frequency rate of 56.20 as against 48.15 in the construction industry and 10.87 in steel. As regards accident severity, bituminous coal has a rate of 9.68 which is almost double that of the construction industry and more than four times that of the steel industry.

The accident hazard of coal mining in comparison with other occupations is also shown in a recent compilation of the Metropolitan Insurance Company, although the anthracite and bituminous coal branches of the industry *and* could not be presented separately. This study showed that the frequency of accidental deaths among miners was 128 [fol. 75] per cent more than the average for all industries, and that there were only two other occupations—electric linemen and railway enginemen and trainmen—out of a total of 73 listed, which had higher accidental death rates than coal mining.

Bulletin 507, of the United States bureau of labor statistics, based primarily on the experience of the Metropolitan Life Insurance Company with its own policyholders, states that:

> Coal mine accidents alone, judging from the comprehensive reports of the United States bureau of mines, are responsible for about 5 deaths annually per 1,000 underground workers who work 300 days a year. Such a fatal accident rate is clearly indicative of a very high total death rate. In the experience of the Metropolitan Life Insurance Company, 22 per cent of all deaths among coal miners is due to accidental violence. The outstanding features of the mortality of coal miners as revealed in this study are the very high ratios for respiratory diseases and accidents, the low ratios for tuberculosis, and the large proportion of deaths clearly occupational in origin. More than one-fifth (21.5 per cent) of the deaths are assigned specifically to occupational causes. Occupational accidents account for 15.8 per cent of all deaths, while occupational diseases are responsible for an additional 5.7 per cent (p. 32).

In 1930 there were 739 accidents reported for boys under 18 years of age in the coal mining industry. According to the department of mines' estimate of the number of boys employed in the coal mining industry in 1930, one out of every seven of the boys employed met with an accident during the year. More boys were injured in the bituminous industry than in the anthracite, but in both branches of the industry the accidents occurring at inside work exceeded those at outside work. Only a little more than one-half the boys employed in the coal mining industry worked underground, yet nearly three-quarters of the accidents occurred inside the mine.

In general it may be said that coal mining is more hazardous than any other form of mining, and according to the reports of the national safety council, more hazardous than any other major industry in the United States.

The most severe accidents in the bituminous mines occur, as a rule, early in the day's work. Only a small amount of data exists in available form as to the hours of the days in which the general run of accidents occur. In 1925, a special study was made by W. W. Adams, statistician of the bureau

of mines, which showed that out of a total of 132 accidents during the day shift, 45 occurred between 8 and 10 o'clock in the morning, and 55 between 1 and 3 o'clock in the afternoon.

During the latter part of the workday—the last two hours—the miner is physically, nervously, and mentally fatigued. He is more inclined to take chances, and less able to protect himself by thinking or acting quickly in order to avoid any dangers which may occur. Moreover, he may, because of his fatigue, leave his working places with conditions such that they may grow worse during the night and contribute to accidents in the next morning.

Although concrete data are not available in sufficient volume to demonstrate clearly the relation of the length of [fol. 76] the work-day to accidents, actual mining experience, as well as such statistics as we have, clearly show that a shorter workday would reduce accidents commensurately. This has been the demonstrated experience of manufacturing industries, and statistics are available to prove it. It is even more so according to experience in the mining industry, and is one of the principal reasons why the hours of work per day should be reduced. Longer hours reduce overhead costs. Shorter hours will save human beings from serious accidents and death.

In addition to adding ultimately to the efficiency of the miner, the six-hour workday, by reducing mining accidents, would more than offset added overhead costs, by the savings of losses which otherwise accrue to the operator, through longer workday resulting in more accidents.

Although the representatives of the mine workers have approved the provision of our code that minors under 16 years of age should not be employed in bituminous mines, we should be very glad to change this prohibition to 18 years or under. Such a limitation is now embodied in the mining laws or regulations of Pennsylvania, Wyoming and Arizona. The raising of the age limit for miners entering the industry would not only reduce the heavy accident rate which prevailed among this age group, it would also restrict the flow of beginners to the industry and thus would aid substantially in the stabilization of employment conditions at the present time.

If there is any industry that justifies the demand for the thirty-hour week—a demand that lies at the very basis of this Recovery Act—it is the bituminous coal-mining in-

dustry; and in reorganization of working time, the United Mine Workers of America has demanded the establishment of the six-hour day and five-day week since 1919.

The Principles of the Recovery Act Must Be Observed

As the representative of almost three-quarters of a million organized mine workers, I may say in conclusion that I come before this agency in a spirit of hope that is curiously mixed with a degree of anxiety. I firmly believe that upon the results of these and similar hearings there depends the future welfare of our country, if not of the whole western world. The critical character of the present economic situation is too well known to require repetition. We all know that barely four months ago we were at the edge of the abyss. We also know that we are still very close to the edge.

The present economic conditions, indeed, is not unlike the political situation which confronted our forefathers immediately following the constitutional convention of 1787. Then, as now, it was not the adoption of a legal document which determined the future. The constitution was, in essence, merely a body of principles, the architect's design for a mighty political edifice. Whether or not the edifice should actually be built depended upon the wisdom and courage and patriotism of the builders. Fortunately the builders possessed these qualities.

So with the present Recovery Act. This act offers, I believe not only a way out, but the only way out. But the Recovery Act, even more than the constitution, is merely a body of principles—the architect's design for a new indus- [fol. 77] trial edifice. Have we the necessary wisdom and courage and patriotism to build according to those plans?

I believe we have, but I am not quite as sure as I was a few weeks ago when the Recovery Act was initiated. To one who has followed closely the codes and hearings developing under the act, powerful industrial and financial interests are adopting a narrow and indefensible attitude, which, if not corrected, may well bring disaster. More and more the framing of codes is a matter of bickering and barter, of surrendering just as little as possible and grasping as much as possible. They appear to have become unconscious of the precarious condition of our entire economic syste-, and to be suffering from the delusion that we are

on our way back to the conditions which prevailed in the summer of 1929.

The Recovery Act means a rebirth—not the bringing to life again of the forces of former years which we have found *of* impossible. If we are to live, we must be born again with a new spirit and a new outlook. Co-operation is to supplant the old laissez-faire; an enlightened social and humanitarian consciousness is to take the place of ruthless competition. The collapse of our business and financial structure has taught us that this is the only way towards economic recovery and a better life. It has not resulted from the teachings of doctrinaires or from the agitation of visionary reformers. Those who have eyes but see not, the reactionaries of former years, should not be permitted to destroy the vision and the inspiration which the President has given us through the Recovery Act.

This unprecedented legislation makes it essential that co-operation take place. It does not destroy private initiative and enterprise but provides that it shall proceed with the public interest constantly in view.

The employer is the greatest beneficiary of the Recovery Act. He gets complete freedom from the anti-trust laws. He gets assurance against unfair competition, and against the overdevelopment of his industry. Thus, if he manages his business at all efficiently he secures what amounts to a government guarantee of reasonable profits and freedom from most of the worries which now trouble him—in short, that security of income and employment which the worker has so long been striving for but is still denied.

What does the employer give in return? Absolutely nothing. He is merely debarred from monopolistic practices and from the opportunity to exploit laborers and consumers, or, in other words, he is merely prevented from unduly absorbing the gains which arise from the productive efficiency of industry. If wage rates are increased, and if, by chance, costs *a* production are thereby enhanced, a commensurate increase in price is contemplated by the recovery program.

On the other hand, what do the workers, either by hand or brain, expect from the Recovery Act? Nothing beyond the right to organize and co-operate with the employers; and to receive what they have always been denied—a fair participation in the output of industry. Enlightened in-

dustrial leaders know now that this is not only desirable but necessary for they have learned since 1929 that such a participation in industrial output in the form of increased purchasing power of the workers is essential to the continued functioning of modern industry itself.

[fol. 78] From the public standpoint, the primary business of the coal industry is to produce coal at the lowest prices consistent with fair returns to capital, equitable wage rates, reasonable working conditions, and fair trade practices. This is not possible without the general organization of mine workers and proper recognition of their organization as the basis of co-operation.

Co-operation—genuine, whole-hearted co-operation—in all good faith between capital and labor in their own and the public interest is a fundamental assumption of and essential to the success of the Recovery Act. This is as it should be, but it is a fact *that* with which we must reckon. Until there is this co-operation, founded on mutual confidence and respect and the assurance that neither side is seeking to take advantage of or invade the rights of the other, it is not to be expected that industry will show that progress towards increased efficiency and output which constitute the crying need of the world today.

In behalf of the United Mine Workers of America, I may say that their members and their leaders would ask nothing better than to be able to lay aside all concern as to the establishment, extension and maintenance of the organization and to devote their best intelligence and all their efforts toward the betterment of the coal industry. Give them freedom from the cares that now infest them and the country will be amazed with the progress that will be made in labor efficiency, lowered production costs and regularity and continuity of operation. This is not an empty promise nor an idle boast. It is a thing that can be accomplished and three-fourths of the operators in the industry know this and are anxious to bring it about.

The United Mine Workers of America sincerely hope that under the influence of the Recovery Act and of public opinion the industry may be able to attain, through a co-operative spirit, to the maximum accomplishments of the benefits offered by the favorable provisions of the National Industrial Recovery Act.

[fol. 79] PLAINTIFF'S EXHIBIT No. 19

Copy

1617 Pennsylvania Boulevard,
Philadelphia, Pennsylvania,
July 9, 1940.

Col. Philip B. Fleming, Administrator, Wage & Hour Division, Department of Labor, Washington, D. C.

DEAR MR. ADMINISTRATOR:

As a result of certain investigations which have been conducted by the Wage & Hour Division at bituminous coal mines in Pennsylvania, particularly at the Revloc shaft of the Monroe Coal Mining Company, and a conference that has been held by your Supervising Inspector, Mr. Caffey, at Pittsburgh, Pa., with a committee of the Western Pennsylvania Coal Operators' Association, concerning the application of the Fair Labor Standards Act to the bituminous coal mining industry, certain questions have arisen that are disturbing to both employers and employees within the industry. These uncertainties have been continuing for some time and are causing much concern to the mine workers and the mine operators, especially with reference to "travel time."

Today, the Negotiating Committee of the Appalachian Wage Conference, namely: Messrs. J. D. A. Morrow, President of Pittsburgh Coal Company; L. T. Putman of the Raleigh Wyoming Mining Company, Beckley, W. Va.; L. C. Gunter, of the Southern Appalachian Coal Operators' Association, Knoxville, Tenn.; Charles O'Neill, President of the United Eastern Coal Sales Corporation, New York City; C. E. Cowan, Vice President of Monroe Coal Mining Company; Frederick H. Knight, Counsel for Monroe Coal Mining Company; W. L. Robisen, President of the Youghiogheny & Ohio Coal Company and Chairman of the Appalachian Wage Conference on the one hand, and Mr. Earl E. Houck, Director of the Legal Department of the United Mine Workers of America, met with Mr. Dorsey, Regional Director, Philadelphia, Pa., and Mr. Gallagher, Regional Counsel, Philadelphia, Pa., at which time these questions were discussed at length, particularly the application of the Act as to the question of hours of work in the bituminous coal industry.

The mine workers and the mine operators present presented their views to representatives of the Wage & Hour Division as to the provisions of the Appalachian Wage Agreement covering maximum hours and working time. We have filed with the Division copy of the Appalachian Wage Agreement, and the entire provision as to maximum hours and working time is included therein. The pertinent language, however, is "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis * * *." The Appalachian Wage Agreement is the basic agreement for [fol. 80] the bituminous mines in the States of Pennsylvania, Ohio, West Virginia, Virginia, Eastern Kentucky, Southeastern Tennessee and Maryland. In this territory there are several thousand rail shipping mines employing from 300,000 to 325,000 men, and some twenty-three operating districts. Each of the districts work out a local wage agreement covering its own territory, subject, however, to the provision that it must include within it all of the provisions of the Appalachian Agreement. The mines in the Appalachian region produce 70% of the total bituminous coal produced in the United States annually. Also, the Appalachian Agreement is used by the United Mine Workers of America as the basic agreement upon which the district agreements of the remaining 30% of the country is predicated.

The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time and covers within its general provisions myriad wage rates, conditions of work, and hours of employment. This agreement, with its twenty-three supplemental agreements, constitutes a whole document. In those conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitute the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside day rate in the North is $.857 per

hour, and in the South it is $.80 per hour. The underground workers are paid on this basis with maximum rates for mobile loading machine operators, approximately $1.09 per hour. In addition, the agreement provides, "work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for *it* at the rate of time and one-half * * *." It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense.

There are many reasons why the provision as to working time has been set out as provided by this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places are, of course, close by and near to the opening of the mine. In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them; but as mines grew older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working places. This is usually provided by what is known in the industry as "man trips." These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working paces throughout the mine, and these trips are also sched- [fol. 81] uled to leave the inside of the mine when the day's work is done, at the conclusion of the seven-hour period of work at the working places. Among other provisions of the agreement, there is provided a time for starting the day's work and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting

time at the various collieries. The agreement provides for a certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period.

In the many conferences that have been held over this period of fifty years, naturally all manner of suggestions and proposals for amplification or amendment of the agreement has been made both by the mine workers and the operators.

The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.

It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from "seven hours' work in the mines at the usual working places" to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Act would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that could paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates of pay, as contrasted with the short hours and the high rates

of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian Agreement (which embodies the custom and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act [fol. 82] and of Interpretive Bulletin No. 13, to the effect that "reasonable standards agreed upon between the employer and the employee will be accepted for the purposes of the Act."

We therefore respectfully request that your Division issue a supplement to Interpretive Bulletin No. 13, stating that the standard of wages and hours of work, and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1940, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage & Hour Act.

Respectfully submitted, for the United Mine Workers of America: (S.) Earl E. Houck, Director of the Legal Department.

For Operators: (S.) W. L. Robison, Chairman; (S.) Charles O'Neill, L. T. Putnam, L. C. Gunter, J. D. A. Morrow, Appalachian Joint Conference, Negotiating Committee.

[fol. 83] PLAINTIFF'S EXHIBIT No. 20

Copy

July 18, 1940.

Earl E. Houck, Esquire,
Director of the Legal Department,
United Mine Workers of America,
1617 Pennsylvania Boulevard,
Philadelphia, Pennsylvania.

DEAR MR. HOUCK:

Reference is made to your letter of July 9, 1940, in which you inquire whether this division will give recognition to well-defined customs and prevailing practices in the bituminous coal mining industry with respect to the determination of hours worked for purposes of the Fair Labor Standards Act of 1938, particularly if such customs and practices have been crystallized for many years in bona fide collective bargaining agreements.

As you know, the determination of whether time spent in performing particular activities should be considered as hours worked depends upon the facts of the particular case. Accordingly, each activity must be scrutinized in relation to all the facts of the case. The provisions of bona fide collective bargaining agreements and the existence of prevailing customs and practices that time spent in performing a particular activity should or should not be considered as hours worked would not, in our opinion, necessarily be controlling. Thus, for example, the fact that it is the prevailing practice to pay for holidays and this practice is set forth in a collective bargaining agreement does not mean that the time which the employee would have worked if it were not a holiday must be considered as hours worked for the purposes of the Fair Labor Standards Act. Conversely, this division has indicated that short rest periods which interrupt the regular period of production may not be considered as a break in employment which may be deducted from hours worked. This would be true notwithstanding collective bargaining agreements or prevailing customs or practices in the industry.

The division does recognize, however, that some industries present peculiar hours worked problems and that such problems have been settled over a period of years to the

satisfaction of both employers and employees through bona fide collective bargaining agreements. Such cases involve difficult hours worked questions which are not susceptible of categorical answer. Strong arguments are available to support more than one solution and, in practice, the problems have been adjusted by means of a long process of give and take. Although the particular adjustment may be subject to some doubt, in our opinion, however, the courts in deciding these problems will take into consideration and be largely influenced by the custom and practice which has been set forth in collective bargaining agreements. Therefore, this division in carrying out its enforcement duties in the bituminous coal mining industry under the act will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of bona fide collective bargaining [fol. 84] agreements. In view of the circumstances which you describe in your letter and in view of the special facts which were developed at conferences with representatives of the industry, it is our opinion that the practice of computing working time on a "face to face" basis in the bituminous coal mining industry would not be unreasonable.

Of course, the foregoing decision should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining.

Very truly yours, (S.) Philip B. Fleming, Administrator.

[fol. 84-a] PLAINTIFF'S EXHIBIT No. 21

R-928

For Release Morning Papers, Saturday, July 27, 1940

United States Department of Labor

Wage and Hour Division

Washington

Two Mining Determinations Announced

Two administrative determinations, one dealing with the status of lessees in metal mines, the other with working time in bituminous coal mines, were announced today by

Colonel Philip B. Fleming, Administrator, Wage and Hour Division, U. S. Department of Labor.

The first determination was made at the request of metal mine operators and lessees of such operators in the inter-mountain states on the question of whether or not lessees of mining property are considered by the Wage and Hour Division as employees under the Fair Labor Standards Act. Colonel Fleming stated that each case must be determined on its particular facts, with primary importance given to the terms of each individual lease agreement and the method of operation under such agreement. If under the lease agreement control and supervision over the operations of the so-called lessee are reserved to the lessor, such lease agreement embodies the normal incidents of the employer-employee relationship and the so-called lessees will be considered as employees under the Fair Labor Standards Act. On the other hand, if a particular lessee is operating mining property which is not a part of the property currently being operated by the mining company with regular employees, and if in the lease agreement the mining company does not have the right to control the lessee in his operation of the mining property, it may well be that the lessee is not an employee of the mine owner but is in fact an independent operator of such property. However, Colonel Fleming pointed out, if such lessee has his own employees who assist in the operation of the leased mine, such employees must be paid in accordance with the Fair Labor Standards Act if the products of the mine move in interstate commerce. Colonel Fleming added that in the ordinary case the mine owner retains title to the ore mined by the lessee and his employees and ships the product of the leased mine, along with his own, in interstate commerce. Therefore, if the lessee does not pay his own employees in accordance with the requirements of the Fair Labor Standards Act, section 15 (a)(1) (the so-called "hot goods" section of the Act) prohibits the mine owner from shipping the product of the leased mine in interstate commerce.

Colonel Fleming also pointed out that two courts recently held lessees of mining property to be employees of the mine owner. One of the cases was decided by the Supreme Court of Utah under the Utah Unemployment Compensation Act, designated as *National Tunnel and Mines Company* v. *Industrial Commission of Utah*, 102

P. 2d 508. The other decision was under the Fair Labor Standards Act and was rendered by a Federal Judge in Oregon as a result of proceedings instituted by the Wage and Hour Division against the Cornucopia Gold Mines Company. In both of such cases, Colonel Fleming stated, the mining company exercised complete control over the operations performed by the lessees.

[fol. 85] The second administrative determination announced by Colonel Fleming today involved the question of determining the number of hours worked by miners in the bituminous coal mining industry.

Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a "face to face" basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term "face to face" to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry.

[fol. 86] PLAINTIFF'S EXHIBIT No. 22

For Release Wednesday, September 18, 1940

U. S. Department of Labor, Wage and Hour Division
Washington

Address Scheduled for Delivery by Colonel Philip B. Fleming, Administrator, Wage and Hour Division, U. S. Department of Labor, before the American Mining Congress, Colorado Springs, Colorado, Wednesday, September 18, 1940

[fol. 87] Perhaps you have heard the sotry of the international commission which once decided to write a treatise on the camel.

Each of the collaborators retired to his library or his laboratory, and in due time the Englishman emerged with a two-volume work entitled, "The Camel in Commerce and Industry." The Russian produced a substantial tome entitled; "The Contribution of the Camel to World Revolution." The Frenchman's contribution was a sprightly little book entitled, "The Love Life of the Camel". But it was not until 25 years later that the German was prepared to publish his researches with a 12-volume definitive treatise under the simple caption of "Das Famel."

If you were to ask the first dozen men you meet what they think of the Wage and Hour Law you would, in all probability, get a variety of answers. One man would tell you that it is the greatest contribution in many years to industrial democracy. Another would point to its usefulness in removing some of the causes of industrial conflicts. Still another would emphasize the beneficial effects upon the national health and morale. A workingman whose income has been directly increased to a point where he is able to move into a better house, to better feed and clothe his family, would tell you that the Wage and Hour Law is a very fine thing indeed; and th-t it is curious nobody ever thought of it before. A girl who in 1938 was working in a factory 60 hours a week for $5 and who now works 42 hours a week for $12.60, would point with gratitude to her increased leisure and the fact that she no longer has to be partially supported by charity. The merchant would tell you that the law has better distributed mass buying power so that he now does a greater volume of business at greater

profit. One manufacturer would assert that the law has [fol. 88] saved him from bankruptcy by lopping off competition based upon starvation wages, but another would point only to his greater labor costs, assure you that the Wage and Hour Law is going to wreck the country's economy, and declaim that this unconscionable interference with business has got to stop.

Much depends upon the point of view. You may recall that other story about the inquisitive old gentleman who stopped at the site of some construction that was going on and asked one of the workmen, "What are you making?" And the workman said, without glancing up, "Four dollars and seventy-five cents a day." He asked another, who replied, "I am making some mortar for the use of the stone-masons." But a third drew himself up proudly, turned his gaze heavenward, and said, "I am building a cathedral."

As to any piece of social legislation designed to build a better and happier and stronger country, what each man tends to think of it depends upon whether it is going to gore his own private and particular ox, or help to fatten him.

In other words, to change the metaphor, I think each of us tends at times to permit the trees to obscure our view of the forest. This tree may be a gnarled and knotty old oak, and that one a straight and stalwart pine, but beyond them both the forest still stands in all its splendor.

Whether we personally like or dislike the Wage and Hour Law, it is a good thing to stop occasionally and re-examine the conditions in this country that brought about its enactment, and to remind ourselves just what it was that Congress and the people expected it to accomplish when they wrote it on the statute books.

Here is one industrial establishment in which wage rates [fol. 89] are so low that the workers cannot exist without the supplement of charity or relief. And here is another establishment in the same industry in another part of the country which wants to pay better wages. But if it does pay higher wages it will be at a great disadvantage in competing with the rival firm with the low wage rates. Aside from the purely humanitarian considerations, does any responsible businessman want to see the starvation wage virus creeping across the country, as it used to do,

until it contaminates all of industry and interferes with the free flow and orderly marketing of goods in commerce?

Again several million men and women were out of work in the United States through no fault of their own. But at the same time there were men and women in certain industries who were being required to work 60, 70, and even 80 hours a week. When such long hours of toil are permitted to obtain in one place, is it not likely that they will be spread by the competitive struggle to other places? Would it not be better to place some limit on the working week so that more people can be employed?

Strikes and industrial disput-s, which certainly are not good for the industry of the country, frequently have been fomented by starvation wages and too long hours of employment. Would it not be a good thing for industry, as well as for the country as a whole, to prevent some of those industrial conflicts by removing one of their most provocative causes?

These are the improvements in our traditional ways of doing business that the Wage and Hour Law was intended to bring about. Are they desirable improvements? Do you know of any better way in which they could have been achieved than the way that was employed; by placing at least a minimum floor under wages and by setting a limit [fol. 90] to the length of the workweek—at the same time permitting the employer to exceed the maximum workweek, whenever he feels that necessity requires, upon paying, as a penalty for the privilege, wages at the rate of time and a half for the excess hours? I do not know of any way in which the benefits desired could have been achieved except by placing all of industry covered by the Act upon exactly the same basis in these matters, with such exceptions and deviations as might be necessary to prevent the substantial curtailment of employment or earning power, which would have defeated the purpose of the Act.

Congress recognized that American industry is diverse and that flexibility is essential in the administration of any law designed to apply to all of it in interstate commerce. I feel that Congress provided rather generously for such necessary flexibility, and while all of it is not available to your industry, some of it is.

For example provision was made for the employment of learners, apprentices and handicapped workers at wages less than the minimum. A method was devised for the par-

tial relaxation of the hours requirements in industries found to be seasonal, and this relaxation has been applied to certain gold placer operations. Certain industries are wholly exempt from the hours provisions or from both the minimum wage and maximum hours. Certain occupations were exempted from both the wage and hour provisions—such as those of executives, professional workers and outside salesmen. Provision was made whereby partial relaxation from the hours requirements may be obtained under certain types of collective bargaining agreements. This should be of considerable interest to the mining industry. Finally, the hours standards are not hard and fast limitations. Employees can be worked any number of hours a week, provided only that time and a half is paid for work [fol. 91] in excess of the statutory maximum.

I am under the impression that no other industry has presented more complicated problems of compliance to us than metal mining. Almost daily we receive a letter or telegram from somebody in the industry asking for an opinion, or an interpretation, or suggesting some arrangement of hours and wages which he wants us to approve as meeting the requirements of the Act.

One might conclude from this mass of correspondence either that metal mining doesn't want to comply with the law and is looking for a loophole, or that the nature of the industry is such that compliance is more troublesome than in other industries. Let me say at once that I entertain no suspicion that the former may be the correct explanation. I know too many people in metal mining to believe for a moment that the vast majority of the employers are trying to avoid compliance. The very fact that so many of you have written to us in itself is rather conclusive evidence that this matter weighs upon your conscience. If you had not wanted to comply you wouldn't have taken the trouble to tell us your troubles; you would simply have gone along in the old way and waited until we caught you.

No, I think the real esplanation is that the industry really is different. In all the country there is no other quite like metal mining.

A part of your difficulty and ours arises from the very nature of the mining industry itself. It is carried on under many varying conditions of climate and geography. There are low grade mines and high grade mines. There are mines operating near large and populous cities; and mines

back in the mountains apart from the main currents of American life. To apply to all of them a single standard [fol. 91a] of labor conditions is admittedly difficult.

But part of the difficulty, I think, is also due to psychological factors and to custom and tradition. Mining in this country always has been a hazardous undertaking, not only for labor but for capital, too. A good deal of it is carried on in small camps isolated from the rest of the world and in which the manners and customs and values associated with living in populous communities do not seem to apply. An industry which has found it necessary to develop its own disciplines would naturally find it difficult to accept regulation imposed from without.

Only in a few exceptional instances are you having trouble about meeting the minimum wage requirements of the Act. Wages in metal mining generally are far in excess of the present 30-cents-an-hour minimum of the statute. Your problems are related almost solely to time-and-a-half for overtime.

The contention with which we most frequently are confronted is that, especially in many of the small, low grade mines, you find it difficult to pay time and a half for hours worked beyond 42 a week and still meet your operating costs, to say nothing of making a profit.

It was the intention of Congress, by putting a penalty upon overtime work, to encourage the employment of additional labor. It was a spread-the-work device. It was assured that imposition of the overtime penalty would encourage employers to eliminate overtime and employ extra workers. But here we meet the contention that this objective is not possible in metal mining because of the difficulty encountered in staggering shifts or in developing a swing-shift operation so that the mine can operate on a six or seven-shift per week basis. The difficulty of pro- [fol. 92] viding additional housing for more employees is put forth as a vital factor. Besides, much of the underground work is highly skilled and can be done effectively only by one worker or one group of workers. It would be dangerous to attempt to solve the overtime problem by sending into the mines men who are unfamiliar with the customary techniques and the lay-out of the mine shaft. Not only is it prohibitive to pay time and a half for work in excess of 42 hours a week in many cases, but we have been told that the men themselves don't want a 42-hour

week. Many of them are living in remote mining camps and they would much rather put in long hours while at work and save up until they can take time off to go to town.

I should hesitate to attempt to furnish an off-hand solution to every problem that has been presented to us, but I want to list some of the principal ones as a basis, for further discussion.

1. Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?

2. Must time spent at lunch underground be considered as time worked?

3. What is the status of the lessee miner, or the leaser? Is he an employee of the mine owner or really a lessee? Must he and his helpers, whom he employs, and pays, be paid time and a half for overtime?

4. What deductions from wages will be considered by the Administrator to be reasonable?

5. Will the operator be protected from liability if he reduces the hourly rate to avoid the payment of overtime?

6. How about the construction employee—the carpenter who produces no goods for commerce, but merely [fol. 93] builds new bunk houses, or a drying room, or a recreation hall? Is he covered by the law and must he be paid time and a half for overtime?

We cannot predict in advance just what the courts are going to say in respect to every problem that arises. The best we can do is to tell you what, in our opinion, the law means, and what, as to any particular problem, the courts have held in the past in analogous, or somewhat similar, circumstances. The case of the Cornucopia Gold Mine Corporation, however, may be worth citing, because it involved many of the questions which have been raised by other mine operators.

The Cornucopia corporation owns and operates a mining property near Cornucopia, Oregon. There is no railroad nearer than 27 miles, and the largest "big town" is Baker, Oregon, which has a population of around 8,000 and is 75

miles away. This certainly may be considered an isolated mining property. The company was organized in 1930 and it is operating mines which previously had been worked but abandoned. The company did not commence operations until 1936. It lost money that year and also in 1937, but made a profit of about $122,000 in 1938, and, at the time of our investigation, it was estimated that about the same amount of profit would be made in 1939. Our inspector commented that "the officers and directors appear to be responsible individuals engaged in a legitimate enterprise."

The violations of the law which were reported upon inspection were all related either to overtime or the record-keeping requirements.

About October 24, 1938, when the Wage and Hour Law [fol. 94] became effective, the company placed all of its employees on an hourly basis, although before that they had been on an eight-hour shift arrangement. The employees worked 48 hours one week and 56 the next, alternately. However, the new hourly rate was so arranged as to provide approximately the same income as before, and if the exact amount was not arrived at by these calculations, then an arbitrary adjustment was made in some instances to bring the wage up to a sum equivalent to the income as it would have been if figured at the regular daily wage. The question here was, What was the regular rate of pay and did the company pay one and a half the regular rate for overtime since the law became effective? We reached the conclusion that the regular rate of pay was not changed and that, hence, nothing extra was paid for the overtime as required by law.

This pay plan was in effect for 91 surface workers until September 19, 1939, but for the 97 underground workers a new system was devised November 15, 1938. This new system provided that the underground miners would continue to work the same shifts as before the Act became effective. There were two shifts a day and the miners went underground either at 7 P. M. and came out at 3:30 P. M., or in at 7 P. M. and out at 3:30 the following morning. This shift arrangement constituted a total of eight and a half hours spent underground, of which 30 minutes was deducted as a lunch period, leaving a net of eight hours worked per shift. For this the men were paid a set shift wage of $3.50, $4, or $4.50 a day. But the new system provided that the employees show only six hours per shift on their time cards, which they kept themselves and turned in each day. The company then

re-established the old shift rates. There could be no overtime because the most that could be worked, even for seven [fol. 95] shifts a week, was 42 hours. The company's theory was that this was a proper keeping of time because it was maintained that two hours were consumed in traveling through the tunnel of the mine to the place where the miner actually worked. In other words, time spent in traveling from portal to face and from face to portal was not considered by the company to be time worked. It is interesting to note that while the company recorded that each man spent exactly two hours a day traveling underground, our own investigation showed that no miner actually spent more than 90 minutes. But, in any event, the question here was whether the time consumed from portal to portal, or only the time actually spent at the face, was to be considered time worked. Our own contention was that time consumed from portal to portal was hours worked, and that for these men the company had failed to pay extra for overtime and had failed to enter on its records the time actually worked.

The company insisted that only 188 employees were directly employed and that 87 were either lessees (or leasers) or employees of leasors, for whom the company was not responsible. We believed that these leasers and their helpers were bona fide employees of the company and had a right to look to it for compensation for their overtime. The normal incidents of the employer-employee relationship existed even though the company called the workers "lessees."

In regard to this question of the status of lessees under the Wage and Hour Law, I anounced in July a determination made at the request of metal mine operators and lessees of such operators in the intermountain States. I stated that each case must be determined on its particular facts, with primary importance given to the terms of each individual lease agreement and the method of operation under such agreement. If under the lease agreement control and [fol. 96] supervision over the operations of the so-called lessee are reserved to the lessor, such lease agreement embodies the normal incidents of the employer-employee relationship and the so-called lessees will be considered as employees under the Fair Labor Standards Act.

On the other hand, if a particular lessee is operating mining property which is not a part of the property cur-

rently being operated by the mining company with regular employees, and if in the lease agreement the mining company does not have the right to control the lessee in his operation of the mining property, it may well be that the lessee is not an employee of the mine owner but is in fact an independent operator of such property. However, I pointed out that if such lessee has his own employees who assist in the operations of the leased mine, such employees must be paid in accordance with the Fair Labor Standards Act if the products of the mine move in interstate commerce. In the ordinary case the mine owner retains title to the ore mined by the lessee and his employees and ships the product of the leased mine, along with his own, in interstate commerce. Therefore, if the lessee does not pay his own employees in accordance with the requirements of the Fair Labor Standards Act, Section 15(a) (1) (the so-called "hot goods" section) prohibits the mine owner from shipping the product of the leased mine in interstate commerce.

Two courts recently have held lessees of mining property to be employees of the mine owner. One of the cases was decided by the Supreme Court of Utah under the Utah Unemployment Compensation Act, designated as "*National Tunnel and Mines Company* v. *Industrial Commission of Utah.*" The other decision was under the Fair Labor Standards Act and was rendered by a Federal Judge in Oregon as a result of the proceedings instituted by the Division against this same Cornucopia Company. In both cases the mining company exercised complete control over the [fol. 97] operations performed by the lessees.

In the Cornucopia case there were 34 employees whom the company claimed were not subject to the Act on the ground that they were employed in constructing a dry room, a recreation room and company house, which employment it held was neither interstate commerce nor the production of goods for interstate commerce. Our Attorneys believe that repairs or alterations to existing structures used in the production of goods for interstate commerce are covered by the Act, whereas the construction of entirely new structures may be exempt. The employees engaged exclusively on new construction work were held not to be covered by the law but the employees who were spending part of their time in this work and part in employment clearly subject to the Act were held to be covered.

These were the matters which comprised the substance of our case against the Cornucopia Gold Mines, and these were the practices which the court enjoined the company from continuing. The court directed the payment of approximately $13,000 in restitution to some 263 employees. I might add that this was a consent decree, and that the company did not challenge the validity of our interpretations and conclusions.

The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing [fol. 98] working time on a "face-to-face" basis in bituminous coal mining would not be unreasonable. The term "face-to-face" was explained to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question.

Deductions from wages are a recurring source of irritation, but the problem seems to be more acute in coal mining than in metal mining. The law, as you know, defines the wage paid to the employee to include the reasonable cost to the employer, as determined by the Administrator, of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are [fol. 99] customarily furnished by such employer to his employees. Our regulations on the subject state that "reasonable cost" shall not include a profit to the employer, and that the cost of facilities, such as tools, furnished to the employee not for his benedit but for the employer's, may not be deducted from wages, if such deduction "cuts into" the minimum wage or compensation for overtime. An example of deductions which we could not wholly approve was reported by one of our inspectors in Pennsylvania. A coal miner, who had worked 77 hours in a two-week period for which his earnings were $79.79, was charged 77 cents for lamps, 52 cents for smithing, $3.55 for powder, 75 cents for Social Security taxes, $1.26 for the union check off, 55 cents for bath, $1.50 for hospital dues, $1.50 for medical service, $60.09 for his account at the store, $8.10 for rent, 20 cents for the baseball fund—a total deduction of $78.79, leaving exactly $1 in cash in his envelope. In this case we disallowed the charges for lamps, smithing and powder and that proportion of the store account that represented a profit to the employer. But so long as such non-deductible items do not "cut into" the minimum wage of 30 cents an hour and no question of overtime is involved, there is no violation of the Act.

Will the operator be protected from liability if he manipulates the hourly rate to avoid the payment of overtime? A rather familiar example of this particular device is illustrated by the case of the employer who, at the time the Act became effective, was paying his employees $4.50 for a normal work day of eight hours. A normal workweek consisted of seven workdays. Thus, the employees earned $31.50 for a workweek of 56 hours. But the employer calls his employees together and makes a little speech. He tells them [fol. 100] that it is necessary for him to pay them on an hourly rate. He has decided, he says, to pay them 50 cents an hour for the first six hours of each workday, and 75 cents (time and a*h* half 50 cents) for the seventh and eighth hours. He asks them to agree to this new wage schedule.

Since the plan means no change whatever in either hours or total earnings, the employees may accept it. The difficulty with this little scheme, however, is that it is a mere subterfuge.

The division of a normal 8-hour day into 6 "straight time" hours and two "overtime" hours is purely fictitious. The employee is not actually being paid at the rate of 50 cents an hour and the alleged overtime rate of 75 cents is not paid for overtime work. He is simply getting, as he always got, $4.50 for an 8-hour day and his regular rate of pay continues to be 56 cents an hour.

This employer does not comply with section 7 of the Act unless he pays his employees 84 cents an hour (time and onehalf 56 cents) for each hour they work in excess of 42 hours a week, or a total of $35.28 for a 56-hour week.

That this is so becomes apparent when one stops to reflect about the purpose of the law. The Act is not intended to force employers to pay more money to their employees who work overtime. The Act seeks to induce employers to reduce hours by making overtime work more costly. Thus, if an employer reduced the hours worked by his employees from 56 to 52 or less during the first year of the law, to 51⅓ or less during the second year, and to 50-2/3 hours or less after this coming October 24, he could continue to pay $31.50 a week, the salary he paid for a 56-hour week prior to the Act, and still be in strict compliance. It can hardly be said that a law which in the case we have sup- [fol. 101] posed, requires a reduction of 4 hours a week during the first year of its existence, an additional 40 minutes a week during the second year and another reduction of 40 minutes a week during the second year and another reduction of 40 minutes thereafter is seriously burdensome.

In general mine operators have attempted to meet the hours requirements of the Wage and Hour Law by one or another of three types of adjustments: They have reduced the number of shifts to five a week of eight hours each; or they have shortened the shift to approximately seven hours; or they are paying the overtime above 42 hours a week. When the 40-hour provision becomes effective in October it will require the payment of overtime or the cutting of shifts to five a week, at some increase in labor costs, unless this is compensated for by the greater

productivity of the workers, as has been the experience of at least one large mine studied by our economists.

Mine operators frequently assure us that their employees are not in sympathy with the maximum week provisions, that they would much rather work 56 or even 70 hours a week at straight time than run the risk of having their total earnings reduced because of the reluctance of employers to pay for overtime. I certainly do not question the good faith of those mine owners and managers who give us this assurance, but the weight of the evidence which comes to us from the miners through their own spokesmen is on the other side. The International Union of Mine, Mill and Smelter Workers indorses the Act, including its present overtime provisions, and we have received many letters from individual miners to the same effect. Several months ago a representative of the Wage and Hour Division made extensive inquiries in Montana and while he [fol. 102] was told that some miners were anxious to put in long hours at straight time, he says he did not succeed in meeting any of them. The fellow who enjoyed working overtime without extra compensation was pretty illusive. He was always over in the next county or in some other part of the state.

In the course of his report this Division representative wrote (and I quote): "I found an interesting situation in Butte. When the Wage and Hour Act first went into effect the Anaconda Company made a forty-hour week immediately effective. The miners formerly were worked 48. The change resulted in the loss of a day's pay each week, but it also resulted in the employment of about 800 additional miners. Considerable agitation was caused by the change, and the miners' pay was so materially reduced that there was a great deal of dissension. However, a wage and hour committee was appointed representing all the unions in the Butte area, and numerous meetings and hearings were held. As a result of the agitation the Anaconda Company offered to return to the 48-hour week and pay the miners time and a half for the hours in excess of 44. (This was before the 42-hour week became effective.) When this proposal was received it was submitted by the wage and hour committee to all the unions in Butte, who took a vote on it. The Teamsters' Union voted in favor of the 48-hour week, but all the other unions in Butte voted conclusively against it, and the vote of the miners' union was almost

unanimously in favor of the 40-hour week. Butte furnishes an excellent illustration of one place where the Act succeeded in spreading employment in an effective way.

"Because of the statements made to me by miners who are themselves in favor of the 40-hour week, I would give full credence to their estimate indicating that some 10 or 15 per cent of the miners in the isolated mines would favor [fol. 103] a longer day. It is significant, however, that in my trip around the state I could not find a single miner who favored it. I believe, however, that when investigations are made it will be found that many violations of the Wage and Hour Law now exist in the isolated mining districts where miners are found employed under many types of contracts. This will be found to be true, I believe, not because of any desire to violate the law, but because, as a matter of custom and convenience, miners in the small camps have been accustomed to work in a haphazard fashion."

I trust I have been able to show you that we are fully aware of most of the problems that perplex you under the Wage and Hour Law. I regret that I am not able on the spur of the moment to produce a sure-fire, litigation-proof answer to every question that you may be able to ask. I do not think that anybody can do that. Some of those questions can be answered finally only by the courts.

It would be pleasant, too, if I could show each of you how you can comply with the law without it costing you a single cent. But I can't do that, either. I don't think Congress expected that you were going to be able to comply without it costing you something. The Wage and Hour Law is social legislation in the broad sense, and like most other good things the attainment of its objectives involves some sacrifice to somebody. It was expected, however, that, though some employers might have to pay more for labor, they, in common with the rest of us, would benefit in the long run from increased mass buying power, better national health, and the greater contentment of workers. These benefits we are now beginning to enjoy.

I think it fair to point out, too, that the price of metals generally has been rising for the last two years. The im-
petus given to business by the great national defense pro-
[fol. 104] gram, in which metals of all sorts are vitally needed, will be especially to the advantage of the mine operators. I might also say that your government for

some years, due to its monetary policies, has been subsidizing gold and silver mine owners. Indeed, but for these subsidies, many mines that are operating today and producing rather handsome profits would still be closed.

Some have felt that the war and our necessity for building up the national defense have so radically changed the industrial situation in this country that we shall have to relax the hours requirements of the Wage and Hour Law. The argument runs that while there is an admitted oversupply of idle labor willing and anxious to go to work, there is an acute shortage of skilled labor and that we must permit the skilled labor already on the job to work overtime without paying time and a half for the overtime.

I have discussed this matter several times recently and I do not want to prolong these remarks unduly by undertaking an extensive treatment of it here. Perhaps it will suffice to repeat that in my opinion no relaxation of the overtime provisions of the Act at this time is either necessary or desirable.

It may be natural to assume that if a man can perform so much work in one hour he can perform 60 times that amount of work in 60 hours, or 70 times in 70 hours. But that doesn't happen to be true, as our own experience in the World War, as well as England's experience both in that conflict and in the present war, amply demonstrates. The Chief of Ordinance and the Quartermaster General of the United States Army both urged restriction of working hours in the World War. Careful studies made in England [fol. 105] showed that labor did not produce as much under the 60 hour week as in a shorter work-week, and 45 hours seems to have been about the optimum, beyond which production fell off, or the workmen, due to fatigue, spoiled about as much material as they satisfactorily completed.

Even if it were true that there is a shortage of skilled labor today, common sense argues the necessity of training more workers now while we have the time for it. If we use up our available supply of skilled labor by requiring long hours of overtime at the beginning of our defensive effort, we will have no reserve to fall back upon later when our situation may be more critical. The overtime penalties of the Wage and Hour Law provides an important incentive to employers to begin training additional workers. The possibility of lengthening working hours forms reservoir

which we should draw upon sparingly and only as a last resort.

An editorial by Charles F. Willis, Editor of the Mining Journal, reflects, I like to think, the best opinion of the industry.

"While the person who thinks that the Wage and Hour Law, and other reform legislation, is all bunk and unnecessary may feel inclined to give as his answer, 'Repeal the whole —— thing!!" he wrote, "We must recognize the fact that the idea of a floor for wages and a ceiling on hours is here to stay. We can travel farther by determining among ourselves just how that principle can be retained, yet fitted to an industry that requires continuous operation in remote places.

"It is urged that those who are conducting mining operations, and who have had trouble in making the present law fit their own situation, advise the investigators of their [fol. 106] difficulties * * * and maybe, out of the mass of facts gathered, an answer will be found whereby the mining industry can be granted the changes necessary to make the law workable. If, after cooperating and trying to find the answer and retain the principle, it still cannot be made to operate without undue hardship on both employee and employer, the remedy of repeal is still open.

"The mining industry has no quarrel or trouble with the wage provisions, as it pays far in excess of the minimum provided, but the hours provisions create many problems and inflict much hardship upon both the owners and workers in the metal mines. It is not an unsolvable problem, but can be worked out better by getting our heads together in consultation rather than butting them against each other." So wrote Mr. Willis.

I, too, feel that the principle of a floor under wages and a ceiling over hours is here to stay. I suggest, therefore, the fullest cooperation among industry, labor and the Division to bring about the achievement of its purpose.

[fol. 107] PLAINTIFF'S EXHIBIT No. 23

Engineering and Mining Journal

H. C. Parmlee, Editor

New York: A. H. Hubbell, H. C. Chellson, Associate Editors; H. H. Wanders, Market Editor; J. H. Edwards, Electric Editor; W. N. P. Reed, Assistant Editor; Washington, D. C., Paul Wooton, San Francisco; J. B. Huttl, Assistant Editor; G. J. Young, Consultant; Walter M. Drake, Managing Editor.

Volume 142 April, 1941 Number 4

Collar-to-Collar vs. Face-to-Face

Wage-Hour Administration defends interpretation of "hours worked" in underground metal mines.

Col. Phillip B. Fleming, Administrator, Wage and Hour Division, Department of Labor.

The Editor of Engineering and Mining Journal has asked me to reconcile, if I can, the statements I made in my speech before the American Mining Congress on Sept. 18, 1940, with my recent approval of an examiner's report announcing our opinion that in effect hours worked in underground metal mining include all hours spent portal to portal minus the lunch period. The portal-to-portal opinion is summarized as follows:

> "The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.
>
> [fol. 108] "The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.
>
> "The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground."

I cannot fully reconcile the two but I can at least explain how my name is attached to the irreconcilable. One of the

first public statements I made on any matter affecting the metal-mining industry was issued in the form of a press release on July 27, 1940, with the title, "Two Mining Determinations Announced." One of these administrative determinations dealt with the subject of lessees, a subject which we are still investigating and on which further announcements may be expected in the future. The other so-called administrative determination was made in answer to an inquiry from the bituminous coal mining industry. Since this is the ancestor of all subsequent confusion it is worth quoting in full. Our press release states:

> "On the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of bona fide collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable • • • I added that the determination in the bituminous coal mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

When I made my speech in Colorado Springs six weeks later I quoted that statement and I added to it the following sentence:

> "In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked."

[fol. 109] It is the implication of that last statement which has led many mining operators to believe that the Wage and Hour Division would accept the face-to-face practice or some modification of face-to-face or portal-to-portal in any mine where the practice has been carried on for a long time. Because of that assumption many mine operators were surprised at my affirmance of the examiner's report on hours worked in underground metal mining in which I accepted for the Division the position that hours worked in

metal mines should be counted as portal-to-portal minus the lunch period.

I am afraid that I must take the blame for making a misleading statement.

The decision we made last July to accept the face-to-face computation of hours worked in bituminous coal mining was reached with considerable difficulty. However, right or wrong, my bituminous coal opinion was based on a unique situation. Here is a large industry with about half a million employees in which the method of computing hours worked is virtually uniform throughout the industry and has been for many years. Furthermore, it is an industry in which this uniformity in agreement on hours worked has been achieved by national collective bargaining, and arrived at by the employers and the employees year after year in joint meetings which go back for half a century. So far as my knowledge goes the determinaton of working hours has not been established in this way and with such uniformity in any other industry in the United States.

In the underground metal mining the practice with regard to hours is entirely different. Only part of the industry operates under collective bargaining agreements, and the agreements are characteristically made on an individual [fol. 110] mine basis. Different contracts contain different hours provisions. This diversity in practice under union contract is reflected in a diversity of practice in unorganized mines. In practically every state of the Union except the states of Utah and Arizona, where the collar-to-collar system is required by law, and possibly the states of Alabama and Tennessee, the practice in the immediate past has reflected all the different bases for computing hours worked. In a general way I was familiar with this condition when I made my address at Colorado Springs. I suppose that in citing the Cornucopia case, which involved a consent decree agreed to by a mining company for its mine in the State of Oregon, I merely felt that I was giving a single practical example of the type of thing I had in mind. Actually as many mining operators have since reminded me, I gave the impression that the Wage and Hour Division would accept the status quo in each individual mine in the United States as of Oct. 24, 1938, the day the act went into effect, as determinative of hours worked in that particular mine under the Fair Labor Standards Act. Since the date of the speech, we have learned far more about the metal mining

industry than we then knew. We have received reports from our regional offices, made surveys, held public conferences. We know now, and we probably should have realized then, that acceptance by the Division of the individual custom of each individual mine would tend to continue a chaotic condition. It would make permanent a lack of standards instead of establishing the standard contemplated in the law. So, to repeat, if I had realized on Sept. 18, 1940, what I know today, I would not have made the kind of loose statement that appears in the speech.

[fol. 111] The general opinion of the Wage and Hour Division on determination of hours for which employees are entitled to compensation (straight time and overtime) under the Fair Labor Standards Act was originally explained in the Division's Interpretative Bulletin No. 13. This was first issued in May, 1939, and while it has been revised at various times the basic principles that our attorneys drafted then are still the basic principles to which we adhere. The bulletin says:

> "As a general rule, hours worked will include (1) all times during which a*m* employee is required to be on duty or to be on the employer's premises or to be at a prescribed work-place, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with the exception of periods when the emplo-ee is relieved of all duties for the purpose of eating meals."

I believe that a fair reading of that paragraph would lead most persons to conclude that the portal-to-portal method of computing hours worked in underground metal mining is the correct one. In the examiner's report the position is taken, and I think correctly, that any meal period of half an hour or more even though underground is not hours worked. On that one point, we have finally expressed an opinion where no opinion was expressed before. As for the rest, I believe that the report which I have adopted is an application to the underground metal mining industry of the principles which we made known earlier in the administration of the act. But even that general state-

ment in the bulletin, sound though it is, has been the source of some confusion. The word "work-place" is used in the bulletin to indicate any place to which an employee may [fol. 112] be sent away from his employer's regular place of business; in metal mining it is customarily used to indicate the spot within a mine to which the miner is assigned. This was clearly not the sense used in the bulletin, but the bulletin has occasionally been thus misconstrued.

This is the history of the Wage and Hour Division position on the collar-to-collar question. What will the Division do about it? First, when the collar-to-collar opinion was approved on March 17, 1941, we stated that for administrative purposes we would consider its effective date to be April 1. Since that time we have realized that it would be fairer to allow a little more leeway to employers to adjust their practices. We have therefore postponed the effective date from the administrative standpoint to May 1, 1941. Second, we have announced that if any employer complies with the wage and hour provisions we will take no action with regard to non-compliance prior to May 1, 1941. Thus any employer whose compliance begins by May 1, 1941, will know that the Wage and Hour Division will not concern itself with the previous method of computing hours worked for his underground employees.

[fol. 113] PLAINTIFF'S EXHIBIT 24

Interpretative Bulletin

No. 13

Hours Worked

Determination of Hours for Which Employees Are Entitled to Compensation under the Fair Labor Standards Act of 1938

July, 1939

United States Department of Labor

Wage and Hour Division

Office of the General Counsel

[fol. 114] Determination of Hours for Which Employees Are Entitled to Compensation under the Fair Labor Standards Act of 1938

General

1. The accurate determination of what constitutes hours worked is essential in order to establish whether the minimum wage and maximum hours requirements of sections 6 and 7 of the act have been satisfied. This bulletin is intended to indicate the course which the Administrator will follow with respect to the determination of employees' hours of work in the performance of his administrative duties under the act, unless he is directed otherwise by the authoritative rulings of the courts or unless he shall subsequently decide that his interpretation is incorrect. The manner of computing minimum wages and overtime compensation which is discussed in Interpretative Bulletin No. 4 is not within the scope of this bulletin.

2. The act contains no express guide as to the manner of computing hours of work and reasonable rules must be adopted for purposes of enforcement of the wage and hour standards. As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with the exception of periods when the employee is relieved of all duties for the purpose of eating meals.[1] The following specific problems with respect to the determination of hours worked which have been presented for our consideration are not sufficiently answered by this formula, however, and more detailed discussions of these problems are, therefore, set out in the following paragraphs.

Time Clocks

3. Neither the statute nor Regulations, Part 516 (Requirements for Keeping Records) require that time clocks

[1] No opinion can be expressed at this time as to certain cases—e. g., employees engaged in mining or in working under high pressure—where by custom or agreement time spent eating meals is paid for as hours worked.

be used or specify the manner in which an employer has to keep a record of the number of hours worked by his employees. Time clocks where used will be an appropriate basis for recording hours worked only when they accurately reflect the period worked by the employee. Whether or not time clocks accurately reflect the period worked by the employee is to be determined by the formula in the preceding paragraph. It should be noted also that if the employer requires the employees to punch a time clock and the employee is required to be present for a considerable period of time before doing so; such time will be considered hours worked.

[fol. 115] Waiting Time and Employees Subject to Call

4. Many inquiries have been received with respect to periods of inactivity due to the break-down of machinery and time spent in waiting for materials to be furnished or waiting for the loading or unloading of railroad cars or other vehicles of transportation. Generally, the time during which an employee is inactive by reason of interruptions in his work beyond his control should be included in computing hours worked either if the imminence of the resumption of work requires the employee's presence at the place of employment or if the interval is too brief to be utilized effectively in the employee's own interest. This result would not be affected by the fact that the employer tells his employees that they are free to leave the premises. Hours workd are not limited to the time spent in active labor but include time given by the employee to the employer even though part of the time may be spent in active labor but include time given by the employee to the employer even though part of the time may be spent in idleness.

5. Many inquiries have likewise been received regarding employments, the very nature of which involve periods of inactivity for varying lengths of time. Ordinarily such periods of inactivity during which employees are on duty should be considered hours worked. Thus, for example, messenger boys who sit around in the office and wait for messages to be routed out should be considered as working not only when they are actually delivering messages but also while waiting for such messages to be assigned. Similarly, a chauffeur who is required to drive officials of a com-

pany engaged in the production of goods for commerce should be considered as working not only when he is actually driving such officials but also during the time he is obliged to hold himself in readiness to drive. In these cases the employee engages in active work intermittently, but his time is not his own while he remains conveniently available to carry out the instructions of his employer.

6. In a few occupations periods of inactivity need not be considered as hours worked even though the employee is subject to call. The answer will generally depend upon the degree to which the employee is free to engage in personal activities during periods of idleness when he is subject to call and the number of consecutive hours that the employee is subject to call without being required to perform active work—i. e., the frequency with which the employee is called upon to engage in work. In these cases, the nature of the employee's work involves long periods of inactivity which the employee may use for uninterrupted sleep, to conduct personal business affairs, to carry on a normal routine of living, etc. A good example of this is the employee of a small telephone exchange operating a switchboard located in the employee's house. During the night no one is in direct attendance at the switchboard and an alarm bell awakens the operator if a subscriber wishes to make a telephone call. The operator has her bed alongside the switchboard and is able to get several hours of uninterrupted sleep every night, as experience over a considerable period of time may often demonstrate. Thus, if over a period of several months a telephone operator has been called upon to answer only a few calls between the hours of 12 and 5 in the morning a segregation of such hours from hours worked will probably be justified.

[fol. 116] 7. In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must start it up again. Similarly, caretakers, custodians, or watchmen of lumber camps during the off season when the camp is closed, live on the premises of

the employer, have a regular routine of duty but are subject to call at any time in the event of any emergency. The fact that the employee makes his home at his employer's place of business in these cases does not mean that the employee is necessarily working 24 hours a day. In the ordinary course of events the employee has a normal night's sleep, has ample time in which to eat his meals, and has a certain amount of time for relaxation and entirely private pursuits. In some cases the employee may be free to come and go during certain periods. Thus, here again the facts may justify the conclusion that the employee is not working at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in this situation will be accepted by the Division.

8. In some cases employees may be subject to call after the completion of their regular working day; employees may be called upon after regular working hours to furnish emergency service to customers. If the employee is required to remain on call in or about the place of business of the company, the time spent should be considered hours worked. If, on the other hand, the employee is merely required to leave word where he can be reached in the event of a call and is not tied down to any particular place, such time need not ordinarily be considered as working at any time during which he is actually making a call and his hours worked would include all time traveling to and from such a call.

Travel Time

9. The problem of travel time, in relation to hours worked, arise in a great variety of situations and no precise mathematical formula will provide the answer in every case. The question is often one of degree; if the time spent by an employee in traveling is reasonably to be described as "all in a day's work," such time should be considered hours worked under the act.

10. As a general rule it may be stated that an employer should treat time spent by an employee during regular working hours in traveling pursuant to the employer's instructions as hours worked. If an employer requests his employee to do a job during regular working hours which requires the employee to leave the place of business, the

traveling time of the employee should be included in hours worked, and this is true whether or not the particular job is within the employee's regular duties.

11. In many cases travel time outside of regular working hours is considered "part of the day's work" and, accordingly, should be treated as hours worked. Thus, an employee whose normal working day extends from 8 a. m. to 5 p. m. may be requested by his employer at 5 p. m. [fol. 117] to make one more outside call which involves 2 hours of traveling time (to get to the place where the work is to be performed and report back to the office) and active labor of 1 hour. In such case the employer may not disregard the travel time in computing the number of hours worked by the particular employee; the employee's working day would extend from 8 a. m. to 8 p. m. In this case the employee engages in active labor for his employer after the close of his regular working day and prior to the commencement of his next regular working day, and his activities between 5 p. m. and 8 p. m. are, under the circumstances, reasonably to be day. The same results, of course, would be reached if the employer requested his employee to report for work 2 hours earlier in the morning to make the one extra call.

12. If a crew of workers is required to report for work at a designated place at a specified hour and all the employees are then driven to the place where they are to perform work, the time spent in riding to such place should be considered hours worked. Similarly, the time spent returning from the place at the close of the day's work should be considered hours worked. In some cases, however, the employer requests his employees to report for work at a specified hour at the place where the work is to be performed instead of at the employer's place of business. In these cases the employee's working time may be considered to begin at the time he reports for work unless the traveling time required in order to reach the place of work is unreasonably disproportionate to the normal traveling time required in reporting for work at the headquarters of the employer. No precise formula will solve this type of situation. What is unreasonably disproportionate depends upon the facts in the particular case and reasonable standards agreed upon between the employer and employee will be accepted for purposes of the act.

13. In some cases an employee is required to travel continuously for more than a full working day during which time the employee is not engaged in actual productive work for his employer. For example, an employee whose regular working hours extend from 8 a. m. to 5 p. m. may be required to spend 2 or 3 days and nights of continuous travel to reach a place where he is to perform assigned work. In such case, as indicated generally in paragraph 10, time spent traveling during the regular working hours should be considered hours worked. Travel time outside of regular working hours need not ordinarily be considered hours worked. If, however, the employee is required to travel on Sundays, Saturday, and holidays, he should be considered as working on these days for the number of traveling hours between his established starting and stopping time on other days of the week. In determining whether the foregoing is applicable, factors such as the length of time required to reach the place where the assigned work is to be performed, whether the employee is given adequate time for sleeping and relaxation the time that the employee is required to report for actual productive labor, etc., are very important.

14. Inquiries have been received with respect to employees who are required to travel continuously for several days and who perform active labor while traveling. Thus, for example, when cattle or poultry, etc., are sent to market by rail, an employee of the shipper is required to travel on the train in order to water and feed the stock en route In other cases an employer who ships machinery by train to a distant customer requires an employee to oil the ma- [fol. 118] chinery en route and otherwise to see that it arrives in perfect condition. The employee generally rides in the caboose with the train crew. In each of the foregoing cases, the employees are subject to call for 24 hours a day, but time required for active work by such employees would ordinarily be much less. The employee generally has a substantial amount of time for sleeping, eating, relaxation, etc.[2] No precise formula will decide this type

[2] The question is obviously one of degree. No opinion is expressed in the case of the relief truck driver. As to the exemption provided by sec. 13 (b) (1) from the hours provision of the act, see Interpretative Bulletin No. 9.

of case and any reasonable agreement entered into between the parties or established by custom and usage which takes into account the amount of time required for active labor by the employee and the fact that the employee is subject to call for 24 hours a day, will be requested by this Division in its enforcement policy.

Meetings and Lectures

15. Time spent in attending meetings and lectures sponsored by the employer (whether or not attendance is voluntary) should be considered time worked if such meetings and lectures are related to the employee's work, as, for example, meetings and lectures for the purpose of teaching the employee the use of new types of machinery on his job, mine rescue, fire prevention and control. In addition, time spent in attending any meetings and lectures should be considered hours worked if attendance is not wholly voluntary.

Employees Having More Than One Job

16. Many inquiries have been received with respect to employees who work for two or more companies. Thus, for example, company A and company B may arrange to employ a common watchman, the employee having the duty of watching the property of both companies concurrently for a specified number of hours each night. In this case A and B are not each required to pay the minimum rate required under the statute for all hours worked by the watchman (i. e., 25 cents an hour each) but A and B should be considered as a joint employer for purposes of the act.

17. In some cases, however, an employee may work 40 hours for company A and 15 additional hours during the same week on a different job for company B. In this case it would seem that if A and B are acting entirely independently of each other with respect to the employment of the particular employee, both A and B, in ascertaining their obligations under the act, would be privileged to disregard all work performed by the employee for the other company. If, on the other hand, the employment by A is not completely disassociated from the employment by B, the entire employment of the employee for both A and B should be

considered as a whole for the purposes of the statute. Whether the employment by A and B are completely disassociated depends, of course, upon the facts in the particular case. This Division will scrutinize all cases involving more than one employment and, at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: If the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly, or indirectly, the other company.

[fol. 119] PLAINTIFF'S EXHIBIT No. 25

Distances From Mine Portal to Various Mantrip Stations in Jewell Valley Mine

To 1 South Man Station	4,600 ft.
#1 Peakes Branch Man Station	9,500 ft.
#1 Peakes Branch Man Station (Main Entry)	9,300 ft.
#3 Peakes Branch Man Station	11,300 ft.
4 South	8,500 ft.
4 South, Face of 5 East (Where party visited)	10,000 ft.
5 South, 6 East Man Station	10,900 ft.
Main East Man Station	10,580 ft.
3 North Man Station	13,575 ft.
No. 1 Ailey's Branch Man Station	8,500 ft.
No. 2 Ailey's Branch Man Station	14,450 ft.
No. 3 Ailey's Branch Man Station	14,300 ft.

PLAINTIFF'S EXHIBIT NO. 26

Employees Members United Mine Workers, Subject to Contract
Time Required to Be in the Mine, Portal to Portal, at Jewell Valley

July 6, 1943

Section	Time in Mine	Number Loaders	Min.	Number of Co. Men	Min.	Min. of Loaders	Min. of Co. Men
First South	7:20-3:40	9	@ 50'	7	@ 50'	450	360
Peakes Branch	7:20-3:50	42	@ 50'	15	@ 60'	2520	900
4 South	7:20-3:55	26	@ 65'	14	@ 65'	1690	910
5 South	7:20-3:55	14	@ 65'	6	@ 65'	910	390
Main East	7:20-4:00	35	@ 70'	13	@ 70'	2450	910
2 North	7:20-4:05	20	@ 75'	10	@ 75'	1500	750
2 Ailey's Br.	7:20-4:10	23	@ 80'	9	@ 80'	1840	720
3 Ailey's Br.	7:20-4:10	10	@ 80'	5	@ 80'	800	400
1 Ailey's Br.	7:20-4:00	9	@ 70'	4	@ 70'	630	280
Slate Crew	7:20-3:58			5	@ 68'		345
Pumpers	7:20-3:58			2	@ 68'		136
Slate Drillers	7:20-3:58			6	@ 68'		406
Machine Men	7:20-3:58			16	@ 68'		1082
Wire Men	7:20-3:58			4	@ 68'		272
Swing Motors	7:20-3:40			4	@ 50'		200
Main Line Track	7:20-3:38			4	@ 48'		432
Main Line Motors	Work 7 hrs.			9			
Brattice Men	7:20-3:58			4	@ 68'		272
Total		Loaders		188	@ 68'	12790	
		Company Men		133	@ 65.9'		8755
		Total		321			21545 Min.
		Avg.		1 man			67.1 Min.

Outside Employees

	No. Men	Hours
Headhouse	8	7
Hoistmen	2	7
Sand Dryers	3	7
Maintenance & Shop	9	7
Slate Dump	4	7
Lower Tipple, 2 Shifts	17	7
Lamphouse	2	7
Outside Labor	4	7
	49	7

[fol. 121] PLAINTIFF'S EXHIBIT No. 27

Estimated Time—Portal to Portal—No. 1 Mine

Section	Number Men			Minutes	Minutes X Men
	Loaders	Co. Men	Total		
1 North	15	6	21	120	2520
Main Parallel	12	6	18	120	2160
Bearwallow	14	7	21	120	2520
1 North (night)		4	4	60	240
1 North Parallel	7		7	60	420
1 North Drainway	20	6	26	60	1560
1 North Main	26	10	36	90	3240
1 North Parallel	17	6	23	90	2070
Gravel Branch	25	10	35	120	4200
2 North	14	6	20	110	2200
Bearwallow Main	16	10	26	110	2860
3, 4 Rt. Bearwallow	13	5	18	110	1980
Bearwallow Parallel	31	13	44	120	5280
5 Rt. Bearwallow	17	6	23	120	2760
6, 7 Rt. Bearwallow	13	6	19	110	2090
	240	101	341		36,100
#4 Mine	27	10	37	30	1,110
	267	111	378		
Main Line Track		11	11	30	330
Slate Crew		3	3	45	135
Main Line Motormen		4	4	100	400
#4 Machine Men		2	2	30	60
Machine Men, Tonnage		14	14	120	1680
Night Foremen's Men		17	17	60	1020
Pumpers		3	3	100	300
Night Dispatcher's Men		6	6	80	480
		60	60		4405
Slate Dump Men		6	6	20	120
	267	177	444		41,735
Less: 50 men enter mine at driftmouths closer to their work than main driftmouth — 50 min. less per man 50 men x 50 minutes each					2,500
					39,235

39,235 ÷ 444 men = 88 min. per man

Outside Employees

Slate Dump	6
Sand Dryers	3
Tipple	25
Shop	43
Power House	9
	86

[fol. 122]

PLAINTIFF'S EXHIBIT No. 28

No. 1 Mine

Name of Bus Operator	Number of Mine Workers Transported	Route	Mileage
John Justice*	16	Pine Creek, Raven, Richlands, Jewell Ridge	64 mi. round trip
Robert Thompson*	18	Honaker, Swords Creek, Richlands, Jewell Ridge	52 mi. " "
B. H. Smith*	16	Middle Creek, Stinson Ridge, Jewell Ridge	28 mi. " "
Levi Hampton*	16	Baptist Valley, Cedar Bluff, Richlands, Jewell Ridge	40 mi. " "
Byrd Burress*	10	Cedar Bluff, Richlands, Jewell Ridge	35 mi. " "
Raymond Street*	10	Tazewell, Richlands	64 mi. " "
Wesley Johnson*	14	Raven, Richlands, Jewell Ridge	26 mi. " "
C. C. Selfe (Bus)	36	Richlands, Seaboard, Jewell Ridge	18 mi. " "
C. C. Selfe (Bus)	26	Richlands, Seaboard, Jewell Ridge	18 mi. " "
C. C. Selfe (Bus) (Nite)	14	Richlands, Seaboard, Jewell Ridge	18 mi. " "
	176		363

* The vehicles marked with * are pickup trucks from ½ ton to 1½ ton capacity with cabs bu lt on chassis.

No. 2 Mine

		Claim for gasoline	
Robert Thompson*	14	Honaker, Swords Creek, Jewell Valley	72 mi. round trip
Chap Lester (bus)*	30	West Raven, Richlands, Jewell Valley	65 mi. " "
Chap Lester*	14	Swords Creek, Richlands, Jewell Valley	56 mi. " "
Frank Shull (bus)*	30	Keen, Mt. Shorts Gap, Jewell Valley	64 mi. " "
Frank Shull*	14	Keen Mt. to Bus (Shuttle)	
Jno. L. Keene*	12	Browns Ridge, Jewell Valley	30 mi. " "
Pat Monaghan*	13	Bradshaw, Jolo, Jewell Valley	40 mi. " "
George W. Day (Bus)	14	Keen Mt., Bill Young Gap Valley	72 mi. " "
Co. Bus	32	Laurel Creek, Whitewood, Jewell Valley	30 mi. " "
Co. Bus (Nite)	10	Wards store below Whitewood, Jewell Valley	45 mi. " "
C. C. Selfe (Bus)	26	Richlands to Jewell Valley	33 mi. " "
C. C. Selfe (Bus)	17	Raven to Jewell Valley	40 mi. " "
C. C. Selfe (Bus)	19	Raven to Jewell Valley	33 mi. " "
	245		580

[fol. 123] PLAINTIFF'S EXHIBIT No. 29

Western Union

March 22 PM 5 20

326/321—The White House
Washington DC 22 355P

Edward R. Burke
Negotiating Committee Southern Appalachian Wage Conference NYK

The dispute between the United Mine Workers and the Bituminous Operators must be settled like any other labor dispute under the National no strike agreement of December 26, 1941, by the peaceful means set forth in the Executive Order No. 9017 of January 10, 1942; that is, by collective bargaining, conciliation and final determination, if necessary, by the National War Labor Board. From telegram I have received from the committee representing the operators and from the press reports of various proposals made at the conference, it is evident that the time remaining before the expiration of the contract on March 31 is too short. I, therefore request the mine workers and the operators to follow the plan adopted at my suggestion in 1941; that is, to continue the uninterrupted production of coal under the terms and conditions of existing contracts until the differences that now separates the parties are peacefully and finally resolved with the understanding that if the new agreement includes any wage adjustments such adjustments shall be computed and applied retroactively from April 1, 1943. If any wage adjustments are made they must of course be made in accordance with the Act of October 2, 1942, and Executive Order No. 9250. It would be unfair to the mine workers and to the operators unduly to prolong this period of uncertainty and I am, therefore, asking everyone concerned to proceed with all speed consistent with the complete and fair minded settlement of the dispute. If it is referred to agencies of the government I shall make the same request of those in charge of such agencies. If there is a wage adjustment within the Standards set forth in the Act of October 2, 1942 and Executive Order No. 9250, the question of undue hardship to individual operators resulting from the agreement to make such adjustments retroactive to April 1, 1943, will be given due consideration by the agencies of Government concerned with costs and prices.

(Signed) Franklin D. Roosevelt.

[fol. 124] PLAINTIFF'S EXHIBIT No. 30

March 29, 1943.

Southern Appalachian Joint Wage Conference

It is agreed that the mines represented in this conference shall continue in operation under all existing agreements for thirty (30) days after April 1st, 1943, in accordance with the request of the President of the United States, as affecting a continuation of work on a retroactive basis.

Negotiating Committee, United Mine Workers of America, Southern Appalachian Joint Wage Conference: (Sgd.) Percy Tetlow, Wm. Turnblazer, John Saxton, Geo. J. Titler, Sam Caddy, John L. Lewis, John O'Leary, Thomas Kennedy.

Operators' Negotiating Committee, Southern Appalachian Joint Wage Conference: (Sgd.) Edward R. Burne, H. A. McAllister, F. M. Medaris, Hal M. Scott, M. L. Garvey.

Southern Appalachian Joint Wage Conference by (Sgd.) Laurence E. Tierney, Jr., Chairman.

Attest: (Sgd.) Paul K. Reed, Secretary.

[fol. 125] PLAINTIFF'S EXHIBIT No. 31

Western Union

(42)

1943 April 23 PM 3 55

HJ 131 98 Govt 2 Duplicate Apl 22

Edward R. Burke, Chairman Southern Appalachian Joint Conference Report Delivery.
Commodore Hotel

The National War Labor Board hereby requests all parties to the dispute between the Operators Negotiating Committee Appalachian Joint Conference and the Southern Appalachian Joint Wage Conference and the United Mine Workers of America to appear before the Board at ten AM Saturday April 24 1943, 5341 Department of Labor Build-

ing, Washington D. C. The purpose of this meeting with the board will be to get from the parties a summary statement of the issues in dispute and to discuss the procedure and timing to be followed in the presentation of the dispute to the board.

(Signed) William H. Davis, Chmn., NLWB.

[fol. 126] PLAINTIFF'S EXHIBIT No. 32

April 24, 1943.

No. 111-1284.
Washington, D. C.

The National War Labor Board by virtue of and pursuant to the powers vested in it by Executive Order No. 9017, January 12, 1942, hereby orders that the parties, in accordance with the request addressed by the President of the United States, to the parties under date of March 22nd, continue the uninterrupted production of coal under the contract terms and conditions that existed on and prior to March 31st, 1943, until the differences that now separate the parties are peacefully and finally resolved, with the understanding that if the new agreement includes any wage adjustments such adjustments shall be computed and applied retroactively from March 31st, 1943.

Signed by eleven members of the Board.

[fol. 127] PLAINTIFF'S EXHIBIT No. 33

W. L. B. Directs Collective Bargaining Resume—Parties to Report Results in Ten Days

The National War Labor Board at 7:00 P. M. tonight issued an interim directive order in Case No. 111-1284, the North and South wage dispute, directing that collective bargaining resume. That order follows in full quote.

J. D. Battle, Executive Secretary.

National War Labor Board

Case No. 11-1284

In the Matter of OPERATORS NEGOTIATING COMMITTEE, Appalachian Joint Conference and Operators Negotiating Committee, Southern Appalachian Joint Wage Conference and United Mine Workers of America

May 14, 1943.

Interim Directive Order

History of the Case

The parties to this labor dispute are the northern and southern groups of bituminous coal operators in the Appalachian area, and the United Mine Workers of America, representing some 336,000 miners. In March, 1943 negotiation for new contracts to replace those scheduled to expire on March 31, 1943, commenced in New York City. In each case, after the parties had outlined their positions for the record, negotiations were conducted in sub-committee without a record.

On March 22, the President of the United States, by telegram, requested that negotiations be extended, beyond March 31, 1943, the expiration date of the previous contract, until the dispute should be finally resolved, with the assurance that any wage adjustments included in the new agreement would be computed and applied retroactively from April 1, 1943.

On April 22, the Secretary of Labor certified the issues in dispute to the War Labor Board on the ground that direct negotiations as well as conciliation had failed, and the Board thereupon assumed jurisdiction in order to

"finally settle the dispute," as provided in paragraph (3) of Executive Order No. 9017, which reads as follows:

> "The procedures for adjusting and settling labor disputes which might interrupt work which contributes [fol. 128] to the effective prosecution of the war shall be as follows: (a) The parties shall first resort to direct negotiations or to the procedures provided in a collective bargaining agreement. (b) If not settled in this manner, the Commissioners of Conciliation of the Department of Labor shall certify the dispute. (c) If not promptly settled by conciliation; the Secretary of Labor shall certify the dispute to the Board, provided, however, that the Board in its discretion after consultation with the Secretary may take jurisdiction, the Board shall finally determine the dispute on its own motion. After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board."

On assuming jurisdiction, the Board promptly notified the parties by telegram that the old contract would remain — effect until the dispute was finally resolved, repeating the President's assurance as to retroactivity of any wage adjustments which might be included in the new agreement. The Board then sent a telegram requesting the parties to appear before it in order that the Board might get from the parties a summary statement of the issues in dispute, and to discuss the procedure and timing to be followed in the presentation of the dispute to the Board.

The United Mine Workers of America did not appear at this meeting.

Thereafter, the Board appointed a fact-finding Panel of representatives of the public, industry and labor, namely Mr. Morris Llewellyn Cooke, Mr. Walter White, and Mr. David B. Robertson. Mr. Robertson was ap[illegible]d as labor representative on the Panel after the Mine Workers had ignored the Board's invitation to nominate a representative.

On April 28, the Panel commenced its hearings in the Northern Bituminous case. The representatives of the United Mine Workers of America, though invited, did not attend this or any subsequent meeting of the Panel. On

the same day, the Panel, being advised that the miners were on strike, recessed the hearing until further notice, in accordance with the established policy of the Board to suspend all proceedings during a stoppage of work.

On May 1, 1943, the President ordered the Secretary of Interior to take possession of and operate the mines for the United States Government.

On Thursday, May 6, following advice that the work stoppage had terminated, the Panel resumed its hearing in the Northern Bituminous case, and, proceeding expeditiously, concluded them on the following day. On Monday, May 10, the Panel commenced its hearing in the Southern Bituminous case and concluded them in two days. At the hearings in both cases, the Panel followed the same procedure namely, to hear the arguments and evidence of the operators, and to introduce into the record the arguments and evidence of the United Mine Workers of America as presented in the transcript of the opening sessions of the Northern and Southern Appalachian Joint Wage Conference in New York at the opening of contract negotiations. This transcript was the only record available to [fol. 129] the Panel setting forth the demands of the miners and arguments and evidence in support thereof.

Obviously this method of presentation could scarcely do justice to the miners' case. The responsibility for this situation, however, rests solely on the representatives of the miners. Nevertheless, the Panel decided that it would make every effort to investigate the equities of the miners' case by the use of whatever reliable evidence it would procure. The daily transcript and exhibits were sent to the representatives of the miners. As a further effort toward fairness, the Board opened the hearings to the Public through the press. The door remained open at all times for intervention by the representatives of the miners. Thus the Panel made every effort to assure procedural due process of law for the absent party. The way is still open for the miners to present to or file with the Panel whatever arguments or evidence they may wish to present, subject, of course, to examination and comment by the operators.

During the week of May 11, the Board has conferred with the Panel as to its further procedure. The Board has now voted unanimously to instruct the Panel to continue with

its deliberations and report its ultimate findings of fact. At the same time, the Board has voted unanimously to issue the interim order hereinafter set forth.

Issues

The miners have presented twelve demands, one of which, headed "Other Provisions" is a merger of seven demands. During the course of negotiations, new demands were added, notably the demand for a "six day work week guarantee." Some of these demands, if granted, would add directly to the income of the miners, wholly aside from any change in straight-time hourly rates. Such demands include a six day work week guarantee, adjustment of hours, (the "portal to portal" demand) an increase in the vacation allowance, elimination of "occupational deductions", shifting of the cost of "safety equipment" from the miner to the operator, arrangements for "spotting" of cars, double time for Sunday, elimination of differentials between districts, and standard classifications. The granting of other demands would not add directly to the income of the miners. These demands refer to the contract termination date, organization of supervisory employees, procedure for district conferences and agreements, leasing of mines, union-made explosives, mine supplies and tools, the beginning of the work week, and "sympathetic strikes."

Conclusions

The bituminous coal cases were certified to the Board without agreement on a single issue. It is not the practice of the Board to look beyond the certification of a case before assuming jurisdiction, to ascertain whether the normal procedures of collective bargaining have been exhausted. However after taking jurisdiction, the Board or a panel of the Board has frequently ascertained that collective bargaining has not been exhausted, or that further bargaining would be fruitful. In such cases the Board has often directed the parties to resume negotiations and report the results to the Board.

[fol. 130] In this case the Board is impressed with the number of issues on which the parties should have been able to reach an agreement by the ordinary procedure of collective bargaining. The operators have indicated that the representatives of the miners were at fault in their seem-

ingly adamant stand on "Two dollars a day, no more, no less." But it is difficult to understand why the operators failed to advance any constructive bargaining suggestions on any of the numerous items in dispute.

On the other hand, it is difficult to understand the insistence of the representatives of the miners on basing their demands exclusively, at least for a time, on an abandonment by the Government of its "Little Steel" formula. Restriction of wage increases constitutes only one approach to the problem of controlling the cost-of-living. Price regulation and rationing are correlative approaches to this problem. A denial of increases in straight time rates does not constitute a denial of relief as to cost-of-living. If the miners have a justifiable complaint, it might be adjusted by stricter enforcement of price ceilings and the development of an adequate rationing program to meet the miners' special problems. Steps to accomplish those results have been taken and others are in progress.

This adamant position assumed by the parties seems to have precluded any attempt at real collective bargaining as to the numerous items on which collective bargaining could properly have taken place without violating the national wage stablization program.

As to the six day week it is noted that provision has been made to increase the price of coal to cover the cost of the overtime on the sixth day of operation. Since the mines have been taken over by the Government, under the direction of the Secretary of the Interior, provision has been made by special order for mandatory operation of the mines to the greatest feasible extent on a six day basis with payment of time and one-half or rate of one-half on the sixth day of work. With a scheduled demand for six hundred to six hundred and thirty million tons of coal for 1943, the largest in our history, plus a growing shortage of miners, it should be possible for the miners and the operators to undertake collective bargaining directed to the development of a mutually satisfactory plan by which the benefits of the six day week could be assured to the miners. Such a plan could probably be reinforced by assurances from the government to the operators that for an agreed period the operators will have a market for all the coal they can produce.

The Executive Orders of the President, notably 9017, and the Board's policies, permit and encourage collective

bargaining in war time as in peace time on all phases of the employer-employee relationship, which do not directly conflict with the national policies against inflation as defined in Executive Order 9250 and Executive Order 9328 as supplemented by the Director of Economic Stabilization on May 12, 1943. As applied to the facts in this case, there is more than ample room for collective bargaining, including bargaining on some issues which may reasonably produce a greater income for the mine workers without prejudicing the program which the government has adopted in time of war for the economic protection of the nation. [fol. 131] The procedure of collective bargaining in time of war serves the purpose of resolving the issues in dispute, or narrowing the issues; to facilitate a fair and speedy determination by the War Labor Board. In this case, because of the apparent absence of any real collective bargaining on many of the major issues these values of collective bargaining are wholly absent. The Board through its Panel is nevertheless proceeding to assemble the facts on which it will base its final decision. Meanwhile, as a constructive step in expediting final settlement of this dispute, either by agreement or by Board decision, the Board is directing the parties to resume negotiations with a view to eliminating, or at least narrowing, some or all of their differences.

Interim Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 and Executive Order No. 9250, the National War Labor Board hereby directs that:

1. The parties shall resume collective bargaining under arrangements to be worked out by the parties jointly in consultation with a Division of the Board on Monday morning, May 17, 1943, at 10:00 a. m.

2. The parties shall report to the Board within ten (10) days the results of their further negotiations.

3. Any wage adjustments resulting from such negotiations shall be submitted to the Board for its approval.

4. The parties shall continue the uninterrupted production of coal under the contract terms and conditions that existed on and prior to March 31, 1943 until the differences that now separate the parties are peacefully and finally

resolved, with the understanding that if the new agreement includes any wage adjustments such adjustments *such adjustments* shall be computed and applied retroactively from March 31, 1943.

5. The Panel shall proceed to complete its findings of fact and submit its report to the Board at the earliest moment consistent with a fair and complete analysis of the evidence in the case.

[fol. 132] PLAINTIFF'S EXHIBIT No. 34

Western Union Telegram

Washington D C 1943 May 17 P. M. 5 21

John L. Lewis, President United Mine Workers of America
Roosevelt Hotel

Since I have been charged with the Responsibilty of Operating the coal mines of the country, and having further in mind that since taking over the mines the employees are now working for the government, I would appreciate your giving me assurance that members of the UMWA will continue to work without interruption at midnight tomorrow, May 18. I express the hope that by this action the way will be opened for immediate collective bargaining conferences

(S.) Harold L. Ickes, Secretary of the Interior.

[fol. 133] PLAINTIFF'S EXHIBIT No. 34-a

Western Union

New York City, May 17, 1943.

Honorable Harold L. Ickes, Solid Fuels Coordinator for War and Custodian of the Mines, Bituminous and Anthracite, Department of the Interior, Washington, D. C.

The United Mine Workers of America Tri-District Scale Committee and the Bituminous Appalachian Scale Committee are in receipt of your request to continue the mines in operation without interruption at midnight, May 18, in the hope that by this action the way will be open for im-

mediate collective bargaining conferences. We are impressed with the fact that your telegram reflects the public interest and that you hope to be able to institute immediately the collective bargaining conferences which we have long been awaiting. We are directing immediate compliance with your request and are dispatching telegrams at once to all local unions in the anthracite and bituminous coal fields of the nation. We are requesting our membership to continue at work under the existing retroactive extension agreement until midnight, May 31. May we point out this is the third time that the United Mine Workers of America has accepted an extension of the agreement, in lieu of a new wage contract which the mine workers of the nation hoped would be forthcoming. May we not hope that in consideration of this continuous exemplification of the patriotism of the members of the United Mine Workers of America that our government will now, without further delay, instruct the coal operators of the industry to forthwith engage in collective bargaining conferences, so as to insure the making of an agreement in the period again allotted for that purpose.

(Signed) John L. Lewis, John O'Leary, Thomas Kennedy.

[fol. 134] PLAINTIFF'S EXHIBIT No. 35

National War Labor Board

Case No. 111-1284

Washington, D. C., May 25, 1943.

In the Matter of Operators Negotiating Committee, Appalachian Joint Conference and Operators Negotiating Committee, Southern Appalachian Joint Wage Conference and United Mine Workers of America.

Comments and Directive Order

On May 14, 1943, the National War Labor Board issued in this case an Interim Directive Order accompanied by a brief review of the history of the dispute. We summarized at that time the events leading up to the Order of the President on May 1, 1943, directing the Secretary of the Interior to take possession of and operate the mines for the United

States Government; the subsequent resumption of production of coal; the renewal on Thursday, May 6 of the hearings before the Panel appointed by the Board, and the failure of the mine workers to appear at those hearings.

We pointed out that the Panel, notwithstanding the failure of the representatives of the mine workers to appear, decided to investigate the equities of the mine workers' case by the use of whatever reliable evidence it could procure, at the same time making every effort to assure procedural due process of law to the absent parties. The Panel hearings were opened to the public, daily transcripts and exhibits were sent to representatives of the mine workers, and the latter were invited to present or to file with the Panel whatever arguments or evidence they might wish, subject, of course, to examination and comment by the operators.

We further pointed out that between May 12 and May 14, the Panel continued its study of the case and was in conference with the full Board, and that the Board had become convinced that the adamant position assumed by the parties in the negotiations had precluded any real collective bargaining on the numerous items as to which collective bargaining could have properly taken place without violating the national wage stabilization program.

[fol. 135] Acting upon this conviction, and in accordance with its established policy of ascertaining, in any case before it, whether the normal procedures of collective bargaining and had been exhausted and of referring the issues or in whole or in part back to the parties for further bargaining, if that course seemed to contain any promise of settling the dispute or narrowing the issues, the Board on May 14, 1943 issued the following Interim Directive Order:

"By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 and Executive Order No. 9250, the National War Labor Board hereby directs that:

"1. The parties shall resume collective bargaining under arrangements to be worked out by the parties jointly in consultation with a Division of the Board on Monday morning, May 17, 1943, at 10:00 a. m.

"2. The parties shall report to the Board within ten (10) days the results of their further negotiations.

"3. Any wage adjustments resulting from such negotiations shall be submitted to the Board for its approval.

"4. The parties shall continue the uninterrupted production of coal under the contract terms and conditions that existed on and prior to March 31, 1943 until the differences that now separate the parties are peacefully and finally resolved, with the understanding that if the new agreement includes any wage adjustments such adjustments shall be computed and applied retroactively from March 31, 1943.

"5. The Panel shall proceed to complete its findings of fact and submit its report to the Board at the earliest moment consistent with a fair and complete analysis of the evidence in the case."

The representatives of the mine workers declined to take advantage of this opportunity to resume collective bargaining under the auspices of the Board, and failed to appear for consultation with a Division of the Board as instructed.

Thereupon, in accordance with paragraph 5 of the Interim Directive Order, the Panel proceeded to complete its findings of fact and submitted its report to the Board on Friday, May 20, 1943. Copies of the Panel's report were forwarded to the parties and were given to the press. The Panel report with the attached exhibits has been carefully examined by the full Board, which now issues this Directive Order in accordance with the provisions of Executive Order No. 9017 of January 12, 1942.

[fol. 136] Notwithstanding the impediments that have been put in the path of the National War Labor Board in the discharge of its duties in this case, the Board has, as in any other case, tried to evaluate soundly and impartially the right and interests of the wage earners in the light of the national wage stabilization policy declared in the Act of October 2, 1942 and Executive Order 9250 of October 3, 1942 and in Executive Order No. 9328 as modified by the Policy Directive of the Director of Economic Stabilization on May 12, 1943.

Issues

In the resume accompanying our Interim Directive Order of May 14, 1943, we stated the issues as follows:

> "The miners have presented twelve demands, one of which, headed 'Other Provisions' is a merger of seven demands. During the course of negotiations, new de-

mands were added, notably the demand for a 'six day work week guarantee.' Some of these demands, if granted, would add directly to the income of the miners wholly aside from any change in straight-time hourly rates. Such demands include a six day work week guarantee, adjustment of hours, (the 'portal to portal' demand) an increase in the vacation allowance, elimination of 'occupational deductions', shifting of the cost of 'safety equipment' from the miner to the operator, arrangements for 'spotting' of cars, double time for Sunday, elimination of differentials between districts, and standard classifications. The granting of other demands would not add directly to the income of the miners. Those demands refer to the contract termination date, organization of supervising employees, procedure for district conferences and agreements, leasing of mines, union-made explosive, mine supplies and tools, the beginning of the work week, and 'sympathetic strikes.' ''

More Specifically the issues were submitted to the Northern Appalachian Operators in the Appalachian Joint Conference on March 10, 1943; and to the Southern Appalachian Joint Wage Conference on March 13, 1943, in the following form:

''Appalachian Joint Conference Proposals''

''1. Contract Termination.

That the Appalachian Joint Wage Agreement be extended from April 1, 1943 to March 31, 1944, inclusive, with the following modification and changes, viz., during the contract period, either party, through representatives designated by the Operators or the International Union, United Mine Workers of America, may terminate the Joint Wage Agreement by giving thirty (30) days' notice in writing, in advance of such cancellation.

[fol. 137] ''2. Hours of Labor.

That the Maximum hours and working time provisions of the Joint Wage Agreement, including the supplemental agreements regarding the six-day week, be reaffirmed with the following modifications:

(a) The six-day week to terminate when the war emergency ends.

(b) To conform with the basic and legal requirement for the industry, the maximum hours and working time provisions be amended to establish portal to portal for starting and quitting time for all underground workers.

"3. Wage Rate Increases.

Combined cutting and loading rates shall be increased 28¼ cents per ton; 25¼ cents of this amount shall be added to the existing rates for loaders and 3 cents to existing cutting rates.

Rates for all classifications of inside and outside day men shall be increased $2.00 per day, except those classifications with substandard wages; namely, greasers, trappers, flaggers, switch throwers and slate pickers, who shall be increased an additional 85 cents per day.

Monthly men shall receive a directly proportionate increase.

The minimum day rate shall be $8.00 without exception.

The increased rates include compensation to meet the portal to portal starting and quitting time.

Pick mining rates shall be increased 28¼ cents per ton.

Yardage and deadwork rates shall be increased 28.57 per cent.

Cutting rates on track mounted machines shall be increased 3 cents per ton. Where tonnage rates are paid on conveyors or other mechanical loading devices, the increase shall be 25¼ cents per ton. Footage and yardage rates shall be increased 28.57 per cent.

"4. Standard Classifications.

Standard classifications of men employed on the various mechanized units shall be established in order to eliminate varying sizes of crews. Such classification shall be uniform both as to day and tonnage workers.

"5. Monthly Men in Strip Mining.

The day and monthly men employed at strip mining operations will have the same wage increases applied and governed by the basic $2.00 per day increases.

[fol. 138] "6. Double Time for Sunday.

Double time shall be paid for all work performed on Sunday.

"7. Vacation Payment.

The Compensation payments for the vacation period shall be increased to fifty dollars ($50.00).

"8. Exemptions Under This Contract.

The term 'mine worker', as used in this Agreement shall include all persons inside or outside of the mine, except the superintendent.

"9. Differentials.

Existing inequitable differentials within and between Districts shall be eleminated, including cutting and loading rates and all other factors operating to maintain such differentials and inequalities.

"10. Shifts.

The operation of three shifts within twenty-four hours and concentrated methods of mining, that prevent rock dusting, necessary ventilation to dilute inflammable and noxious gases, and proper inspection, have increased the hazards and resulted in great loss of life. In order to promote safety and establish sound mining practices we, therefore, demand modification of the provision in the Appalachian Joint Wage Agreement dealing with shifts by limiting the number of shifts so that not more than two can be operated within any twenty-four hours.

"11. Other Provisions.

Operators who are parties to this Agreement shall include clauses to protect the wage scales and conditions of employment whenever any of their mines are let to any corporation, company or individual for operating purposes. This obligation is to protect the contract and preserve the interest of the miners.

The operators shall be responsible for delivering mine bars to and from the miners' working places.

Only union-made explosives, mine supplies and tools shall be made available for use by the mine workers.

Mine workers shall not be required to pay for safety equipment and devices, including electric light and cap rentals. All day and monthly men shall be furnished necessary tools and equipment without charge.

There shall be no charge to the miners for blacksmithing.

The work week shall begin on Monday and shall be designated in the Agreement.

[fol. 139] It will not be a violation of any terms of the Agreement for the mine workers to cease work to prevent shipment of coal to non-union concerns or where a strike is in progress.

"12. District Conferences and Agreements.

Joint conferences of districts in the Appalachian Region shall be held concurrently with the Appalachian Conference. All other districts shall meet in joint conferences after the Appalachian Agreement is negotiated for the purpose of negotiating district wage agreements pursuant to the basic agreement and this policy.

Wage scale resolutions, affecting local working conditions and rules, shall be made a subject for consideration by all district joint conferences.

Districts shall not negotiate agreements which grant more favorable conditions to the Operators than obtain the basic contract.

All supplemental agreements shall be approved by the International Union."

Economic Position of the Industry, 1923 to 1942 Inclusive

The history of the bituminous coal industry is one of overdevelopment and irregular operation. Even before 1923, despite a generally rising rate of production of bituminous coal, the industry was characterized by wide fluctuations in annual output and excess capacity. After 1923 a period of drastic curtailment set in and, because bituminous coal is largely an industrial fuel, the business depression accelerated the downward tread. By 1932, production was 45.1 percent below the 1923 level, total realization 73.1 percent, and number of wage earners 42.3 percent. Those dependent on the industry for a livelihood also suffered a drastic curtailment in their incomes. The wage earners who on an average earned $.845 an hour in 1923 received only $.681 in 1929 and $.52 in 1932. Average weekly earnings, which were $25.60 in 1923 and $25.71 in 1929, dropped to $13.91 in 1932. Average annual earnings fluctuated between $1150 and $1396 during the years 1923 and 1929, and then dropped sharply to $677 in 1932. Not income prior to de-

ductions for income and excess profits taxes, which were substantial during the war and post-war years, disappeared by 1925.

The plight of the industry improved as the forces of recovery became effective in 1933 and subsequent years, but the industry as a whole continued to report deficits through the year 1939. The year 1940 showed for the industry as a whole net profits for the first time in fourteen years. In the years 1941 and 1942 the all-out effort to win the war further enhanced the demand for bituminous coal.

[fol. 140] In 1942 the bituminous coal mines produced 580,000,000 tons—an output which surpassed the previous all-time high of 579,000,000 tons in 1918. In 1941 per ton realization exceeded reported costs by about 7 cents; in the 12 months ending June 30, 1942, by 9 cents.*

In the years since 1933 the United Mine Workers of America now effectively organized throughout the industry, have secured wage increases which greatly increase the deeply depressed income of the mine workers. These increases in wage rates coupled with the increased production in the year 1942, in which average working days are estimated at 240, have lifted the earnings of the mine workers for 1942 to an average hourly earning of $1.06, an average weekly earning of $35.00 and an average annual earning of approximately $1,736. It is to be remembered, of course, that these average figures, although they are valid and useful for comparative purposes, do not measure the actual income of individual mine workers. They do show that on the average the year 1942 was a year of comparative prosperity both for the mine operators and the mine workers. With the existing demand for bituminous coal, it is reasonable to presume that the year 1943, in which it is estimated that there will be a production of 600,000,000 tons, will be even more satisfactory to all those whose livelihood depends upon the bituminous coal industry. With the 6-day week, which has now been arranged for, there will un-

* The per ton margin should not be regarded as net returns to the owners of the mines because the cost data do not include interest or investments, taxes on unassigned coal lands or coal lands which will not be mined for 30 years, cost of mines under development, expenses for company houses, demurrage charges, idle mines, abandoned mines, and bad debts.

doubtedly be a substantial increase in the weekly and annual income of the mine workers in 1943, and no doubt an increase in the net realization of the operators.

A Comparison of Hours and Earnings in Bituminous Coal with Hours and Earnings in Other Industries or Groups of Industries**

A comparison of weekly hours, and average hourly and weekly earnings of bituminous coal mines with those prevailing in 9 competing and selected higher paid basic industries, in manufacturing industries as a whole, and in metalliferous mines in December of 1942 is summarized below.***

[fol. 141] Hours Per Week. In all these industries, except anthracite and bituminous-coal mining, hours of work averaged 40 or more per week. Bituminous coal mines averaged 35.7 in December, 1942, while establishments in manufacturing industries as a whole averaged 44.4 and those in metalliferous mining 43.9. The durable-goods group of manufacturing industries averaged 46, shipbuilding and class 1 steam railroads 48, and locomotives 50.

Average Hourly Earnings Excluding Overtime (Straight-time Hourly Earnings). The $1.061 earned per hour by bituminous mine workers was $.211 higher than the hourly earnings paid in manufacturing industries as a whole and $.182 above those paid in metalliferous mining. In only four of the industries included in this analysis—did wage earners receive higher straight-time hourly earnings than did the—

** Because the employees who are in the mines spend some time each day going to and from their working places to the entrance of the mine, the average hours and hourly earnings reported for bitu*nimo*us coal mines are not strictly comparable with those reported for most manufacturing industries.

*** Competing Industries:

Anthracite, Crude-Petroleum production, electric light and power.

Selected High-Paid Industries:

Shipbuilding, Locomotives, Automobiles, Petroleum refining, Blast furnaces, steel works and rolling mills, Class 1 steam railroads.

bituminous coal workers. In no instance did the miners by more than $.07 per hour.

Average Weekly Earnings. The mine workers earned, however, less per week, in some instances substantially less, than wage earners in these competing and selected high-paid industries except those employed in anthracite mines. This poorer comparative showing of average weekly earnings was due to the fact that the mine workers worked only 35.7 hours per week while wage earners in other industries averaged 40, 44, 48, and even 50 hours per week.

Under the new six-day week arrangement, mine workers who work the full 6-day week of 42 hours with pay at the rate of time and one-half for 7 hours, as provided in the existing Appalachian agreement, will earn average weekly incomes not exceeded by the average weekly incomes of wage earners in any of these selected industries except shipbuilding, locomotives and automobiles.

Average Annual Earnings. The average annual earnings of bituminous coal miners for 1942 (computed from the employment and payroll data compiled by the Bureau of Labor Statistics) when compared with these competing and selected high-paid industries and for the other industries and basic industrial groups make a less favorable showing than the weekly earnings comparison.* They are below, frequently considerably below, annual earnings for the selected high-paid industries and for the durable-goods group of manufacturing industries, metalliferous mining, wholesale trade, and 12 other individual industries. This less favorable showing made by the bituminous coal industry is accounted for in part, by the fact that the mine workers averaged only 32.9 hours per week and in part by failure to work continuously throughout the year. The industries with much higher annual earnings worked from 45 to 48 more hours, and paid their workers substantial overtime. [fol. 142] Here again the position of the bituminous coal miners will be substantially improved by the arrangements

* It may be noted, however, that the average annual earnings of mine workers are $328 above those computed for the nondurable-goods group of manufacturing industries, and considerably higher than those for cotton seed oil, cake and meal, cotton goods, men's clothing, sawmills, women's clothing, boots and shoes, millwork, retail trade, and printing and publishing.

for operating the mines on a 6-day week. If one day of work at time and one-half is added to the 1942 weekly income of a mine worker his average annual income in 1943 will be exceeded, among all the industries, only by the average annual income of workers in shipbuilding, locomotives, machine tools, automobiles, aircraft and electric and steam railroad cars. It would equal or exceed the income of the workers in all these other basic industries or industrial groups.

Wage Rate Changes Since January 1, 1941

During the period January 1, 1941 to March 19, 1943, the mine workers received but one general wage increase and that became effective in April 1941. The percentage increases that were granted to important occupational groups and to all mine workers (obtained by weighting the percentage increases computed for each occupation or occupational group from the rates specified in the contracts in effect before and after the wage negotiations) are shown below:

Occupational Group	Percentage Increase
All Mine Workers	18.2
Outside Day Men	24.5
Inside Day Men	21.1
Tonnage Men	15.5

In its decision in the "Little Steel" cases (In re: *Bethlehem Steel Corporation, Republic Steel Corporation, Youngstown Sheet and Tube Company, Inland Steel Company and United Steel Workers of America, C. I. O., 31, 34, and 35*) on July 16, 1942 this Board, seeking to do its part in the stabilization of "the purchasing power of the wage earners hourly wage rates as of January 1941" and at the same time "to avoid that kind of injustice that comes from rigidly applying a horizontal rule to all cases without regard to their particular merits," adopted a yardstick for measuring the propriety of a general wage increase within the national stabilization program. The Board in that case recognized "its duty to indicate the manner in which the national economic policy affects the demands of labor for general wage increases." The Board found that, following a period of relative stability in the relation of

wages to prices, there had been an increase in the cost-of-living as measured by the general index of the Bureau of Labor Statistics, of 15% from January 1, 1941 to May 15, 1942, the approximate date of the President's stabilization message of April 27, 1942. To effect the desired stabilization with due regard to this increase in the cost-of living, the Board laid down the rule that "if any group of workers averaged a 15% wage increase or more" for the period from January 1, 1941 to May 1942 "their established peace-[fol. 143] time standards have been preserved". And the board announced that for any such group of workers no further general wage increase would be made as a cost-of-living allowance; that wage adjustments for such a group could only be considered from the point of view of inequitable or substandard conditions, such as had been outlined in the President's message of April 27, 1942.

That yardstick has been applied by the Board from that time to this, to great masses of American workers which in the aggr-ate include the great majority of all such workers. It would be manifestly unfair to apply any other yardstick to the mine workers. The War Labor Board exists and acts by exercise and delegation of the war powers of the President as Commander-in-Chief. In its exercise of those powers it must certainly apply them equally to all men in similar circumstances. That is the very essence of justice.

For these reasons the mine workers' demand for a general wage increase of $2.00 a day must be denied, since they are among those workers who have already had a general wage increase of more than 15% since January 1, 1941.

Accordingly, by virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Act of Congress of October 2, 1942 and the Executive Orders and Regulations issued thereunder, the National War Labor Board hereby directs as follows:

1. Wage Rates

a. General Wage Rates

The demand for a general wage increase of two dollars a day is denied.

b. Reclassification

The parties shall negotiate forthwith a reasonable reclassification (1) of the occupations of greasers, trappers, flaggers, switch throwers and slate pickers, or (2) of the employees engaged in those occupations. Any agreement resulting from such negotiations which provides for reclassification of these occupations shall be submitted to the Board for its approval.

2. Portal to Portal

Wage adjustments made in compliance with the Fair Labor Standards Act of 1930 are consistent with the national wage stabilization policy. The demand of the mine workers for portal to portal pay rests on the assumption that such pay is required by the Fair Labor Standards Act, and that the Operators do not now make such payment.

In support of its claim the Union refers to a recent decision of the U. S. Circuit Court of Appeals for the Fifth Circuit in the case of *Tennessee Coal, Iron and Railroad Company* v. *Muscoda, Local No. 123.*

[fol. 144] That decision upheld the finding of the lower court that all time spent underground in the iron ore mine involved was working time and should be included in the computation of the employees' work week under Section 7 of the Fair Labor Standards Act, which requires every employer to pay overtime wages for a work week longer than forty hours.

The operators, on the other hand, allege that the court decision in that case is an erroneous one, even on the facts of the case, and further, is not applicable to the coal mines involved in the instant dispute because of vital differences between the facts in the *Tennessee Coal, Iron and Railroad Case* and those of the instant case. In addition, the coal operators allege that the time consumed in travel from portal to portal was taken into account when the parties, in collective bargaining, negotiated the wage rates of the present Appalachian contract. Therefore, the operators claim, any legal obligation which may exist for the payment of travel time from portal to portal is being met by them now in the form of existing base rates of pay, which were agreed to by the parties at a higher level than would have been the case if the nature of the industry did not require portal to portal travel time.

It is not within the province of the National War Labor Board to determine whether or not in this case the law requires payment for all time spent underground. It should be pointed out, however, that the decision of the Circuit Court of Appeals in the *Tennessee, Coal, Iron and Railroad Case* is subject to rehearing by the same court and is also subject to review by the U. S. Supreme Court on writ of certiorari.

Thus, this controversy over portal to portal pay presents a mixed question of law and fact which, in the absence of a specific court determination binding on these parties, can and should be settled by them in collective bargaining.

It should be recognized by the parties that any agreement reached by them in collective bargaining on this matter must be genuinely and reasonably related to the portal to portal issue. Any such settlement shall be submitted to the War Labor Board with supporting data sufficient to enable the Board to determine whether or not it constitutes a genuine settlement of alleged claims arising under the Fair Labor Standards Act, and not an indirect wage increase in violation of the wage stabilization policies.

The Board understands that there is considerable variation in portal to portal travel time among the different coal areas in the country. Although the Appalachian area only is before us, it is the practice of outlying areas to a large extent to follow the Appalachian agreement. If the parties in their negotiations choose to negotiate on the basis of area adjustments, then the Board would be able to approve wage adjustments based on travel time in any area on a basis shown to be justified by the facts of that particular area.

Furthermore, the Board feels that any payment for travel time should be so designated and paid for as an item sepa- [fol. 145] rate and apart from hourly or tonnage wage rates, in order that there may be no doubt that travel time has been included in the mine workers' compensation.

It should be understood that if the parties decide to settle their differences over the portal to portal issue and share the benefits among all the miners including those who work on the surface as well as underground, the total sum distributed shall not be in excess of a sum computed on the basis of the average time spent by underground workers in travel from portal to portal.

With these understandings, the Board directs the parties to undertake to reach such a settlement, subject to Board approval.

3. Double-Time for Sunday

The demand for payment of double-time for all work performed on Sunday as such is governed by Executive Order No. 9240. The demand is therefore denied.

4. Vacation Payment

In the paragraph of the present Agreement entitled "Vacation with Pay," the words "'the sum of twenty dollars ($20.00)'" shall be replaced by the words "the sum of fifty Dollars ($50.00)."

5. Leased Mines

The parties shall negotiate forthwith a suitable provision to protect the wage scales and conditions of employment existing whenever a mine under contract is let for operating purposes, provided that, unless otherwise mutually agreed, such provision shall not impose an obligation on the lessor to guarantee the wage scales and conditions of employment.

6. Union Made Explosives

The demand that only union made explosives, mine supplies and tools shall be made available for use by the mine workers is denied.

7. Deductions from Wages for Occupational Charges

It is the opinion of the National War Labor Board that the mine workers' request that they should not be required to pay for safety equipment and devices, including electric light and cap rentals, is a fair and reasonable one. It is the opinion of the Board that the operators should furnish to the mine workers without charge, their safety equipment and working tools, including blacksmithing.

Therefore, the Board directs the parties to settle the issue of deductions from wages for occupational charges by incorporating in their new contract the principle that such charges shall henceforth be paid for by the operators. These charges to be shifted to the operators shall not include per-

sonal wearing apparel such as hats, clothing, shoes and goggles.

[fol. 146] It is the ruling of the Board that the operators should stand the cost of all occupational charges for tools and equipment necessary for the mining of coal, and that the mine workers should pay for special personal clothing equipment necessary for work in the mines. The foregoing general principle is well recognized in American industry. It is the opinion of the Board that the time has come for its general application in the coal industry as well.

Those charges now to be shifted to the operators, the amount of which can be immediately determined from the books of the operators, shall be retroactive. Those charges, the amount of which cannot be immediately determined, shall become effective on the date of the Directive Order.

8. Spotting of Cars

The Board is of the opinion that the operators should be responsible for delivering mine cars to and from the working faces in all mines, in accordance with now prevailing practice among the more efficient mines. It is recommended that the parties negotiate on this issue and report the results of their negotiations to the Board.

9. Contract Termination

Unless otherwise mutually agreed, the term of the contract shall be two years beginning April 1, 1943, except as to general wage rates, which may, on thirty days' notice from either party be reopened for negotiation at the end of the first contract year. The foregoing sentence shall not preclude the parties from mutually agreeing, at any time during the term of the contract, on changes in general wage rates, subject to approval by the Board. If at any time during the term of the contract a significant change occurs in governmental wage policy, either party shall have the right to request negotiations on general wage rates. If the parties are in disagreement as to whether a significant change has occurred, such dispute may be submitted to the Board for decision.

10. Other Issues

On all other issues not covered by this Directive Order, the provisions of the present Appalachian Agreement and

the various District Agreements, unless changed by mutual consent, shall be continued.

11. The Six-Day Week

Operation of the bituminous coal mines of the country on a six-day week has, at the request of the Solid Fuels Administrator, been planned for by the industry. The parties to the Appalachian agreement on February 10, 1943 modified that Agreement to provide for a sixth day of work of seven hours, for which the mine workers are paid at the rate of time and one-half. The War Labor Board on December 3, 1942 notified the Office of Price Administration that such overtime payment was called for by the letter and spirit of the Appalachian Agreement and could be put into effective- [fol. 147] ness without further approval of the Board. Since January, 1943 the OPA has authorized an increase in the maximum price of bituminous coal, district by district, to include the cost of this overtime payment. The new maximum prices have been extended to all areas in which the operators have been directed to operate the mines on a six-day basis. This includes all the bituminous coal mining areas of the country except Northern Colorado and Iowa, where the conditions are such that a sixth day of operation is not feasible. To these regions the increase of maximum prices has not been applied.

These steps, in conjunction with the war time demand for maximum output of bituminous coal and the growing shortage of mine workers, afford a very considerable assurance that the six-day week will generally prevail in all areas except Northern Colorado and Iowa. Complaint has, however, been made that in individual cases mine workers have not been given a fair and equal opportunity of actual employment six days a week even though the individual workers have been ready and able to work six days.

The National War Labor Board recommends that the parties mutually agree on a reasonable contract provision, wherever the mines are operating six days a week, whereby the operators will give a fair and equal opportunity to individuals to work during each of the six days. The Board suggests that such a contract provision might well include a stipulation that the operator will not hire additional workers until his present employees have had such full opportunity.

If such a contract provision is agreed upon, it should be adjusted to the grievance provisions of the Appalachian Agreement. If the parties cannot agree to such a provision, the Board will take the matter under further consideration for the purpose of working out an appropriate contract provision to be included in a supplemental Directive Order of the Board.

The Board is receptive to any reasonable proposal to assure all miners the benefit of the sixth day of operation. However, an annual wage based on 52 weeks of production at six days a week cannot be guaranteed the mine workers without imposing an undue burden on the industry or greatly increasing the cost of coal to the public.

Nevertheless, it may be possible to assure the mine workers a greater benefit than they now enjoy from the six-day week without undue hardship on the operators. These problems, which lie outside of the field of labor disputes and wages, appear to be suitable for consideration by a body of appointed experts, organized as a commission, working in collaboration with the Administrator of Solid Fuels for War.

This commission would be in a position to study such other problems as the parties, or the Board, might wish to refer to it. The commission would consider, on the one hand, possible improvements in working conditions, matters of safety and improvements in living conditions for the [fol. 148] miners and their families, and on the other hand, improved efficiency in mining operations, as well as in the transportation and marketing of coal.

The Board recommends to the parties the creation of such a commission.

12. Final Disposition of Issues Referred to Collective Bargaining

On or before fifteen (15) days from the date of this Directive Order, the parties shall submit for Board approval any agreement reached relating to wages. The parties shall also report within fifteen (15) days, for final dispositions by the Board, any issues still in dispute on which an agreement has not been reached. Until the differences that now separate the parties are peacefully and finally resolved in accordance with the procedure set forth in this Directive Order, the parties shall continue the uninterrupted produc-

tion of coal under the contract terms and conditions that existed on and prior to March 31, 1943 with the understanding that any wage adjustments included in the new agreement shall be computed and applied retroactively from March 31, 1943.

(S.) William H. Davis, Chairman, Frank P. Graham, Robert J. Watt, Martin P. Durkin, Roger D. Lapham, George H. Mead, George W. Taylor, Wayne L. Morse, Van A. Bittner, John Brophy, Cyrus S. Ching, Horace B. Horton.

The labor members dissent on the decision to deny the mine workers' request for a $2.00 a day general wage increase for the following reasons:

The Minority Opinion

The Labor Members dissent from the decision of the majority which refuses to grant the United Mine Workers' request for a two dollar per day raise in straight time hourly pay. The Labor Members submit that this request of the miners is justified because of the tremendous and uncontrolled rise in the cost of living during the past two years.

We are forced to register our objections to the application of the 15% allowance for the increased cost of living not only in this specific case but also in general.

[fol. 149] Weakness, vacillation and indecision are the prominent characteristics which have marked recent attempts to regulate prices. At the same time the regulation of wages has been followed so rigorously that workers have been allowed relatively small and numerically few wage increases. The uncontroverted report of the War Labor Board to Congress is substantial evidence of the fact that the workers of this nation have done more than "hold the line." Wages have occupied the anchor position in the tug-of-war between the forces of inflation and of anti-inflation. The failure of price regulation makes imperative that wage regulation must be realistically adjusted.

(S.) George Meany, Van A. Bittner, Matthew Woll, Delmond Garst, Robert J. Watt, John J. Brophy, Martin Durkin.

[fol. 150] PLAINTIFF'S EXHIBIT No. 36

June 1, 1943.

John L. Lewis (Identical telegram to Ezra Van Horn), Pan American Room, Statler Hotel, Washington, D. C.

Reports received today show that many coal mines are not operating because of failure of members of the United Mine Workers to report for duty. These workers are employed under a contract which has been continued in effect by direction of the President of the United States, and I have carried out, and will continue to carry out, its provisions. The failure of the union members to work constitutes a strike against the government of the United States, which is in possession of the mines. On the other hand, there are a few powerful operators who from the beginning have deliberately opposed any compromises which might lead to a reasonable settlement. The failure of the operators and the representatives of the miners to reach a mutually agreeable contract, subject to the jurisdiction of the War Labor Board, during many weeks of dilatory proceedings, is an important factor in the creation of the present situation. Without coal in adequate quantites we cannot win the war. It is intolerable that there should be a cessation of work for so much as one day regardless of where the blame lies for failure to conclude a contract between the operators and the miners, neither group can escape responsibility for the delay which necessitated intervention by agencies of Government, and the President of the United Mine Workers cannot escape responsibility for the cessation of work today. I call upon the President of the United Mine Workers to return to their wartime posts of duty. I also call upon the members of both groups, each to do within his individual capacity, everything necessary to reach a speedy conclusion that will assure a continuous production of coal on a normal basis.

(Signed) Harold L. Ickes, Secretary of the Interior.

[fol. 151] PLAINTIFF'S EXHIBIT No. 37

June 3, 1943.

Statement by the President

Most of the Nation's coal mines are closed because of a general strike which has taken place in defiance of the Government of the United States. I have instructed the Secretary of the Interior, who has possession of the mines for the Government, to proceed to reopen the mines.

The Secretary of the Interior will continue to operate the mines under the terms and conditions of work which obtained under the old contract which was extended by order of the War Labor Board plus those new terms and conditions which have been approved by the Board and which were announced in the Board's order of May twenty-fifth.

As President and Commander-in-Chief, I order and direct the miners who are not now at work in the mines to return to their work on Monday, June 7, 1943. I must remind the miners that they are working for the Government on essential war work and it is their duty no less than that of their sons and brothers in the armed forces to fulfill their war duties.

Just as soon as the miners return to work, the disposition of the dispute between the miners and the operators will forthwith proceed, under the jurisdiction of the War Labor Board and in accordance with the customary and established procedures governing all cases of this sort.

[fol. 152] PLAINTIFF'S EXHIBIT No. 38

National War Labor Board

Washington, D. C.,

June 17, 1943.

Case No. 111-1284

In the Matter of OPERATORS NEGOTIATING COMMITTEE, APPALACHIAN JOINT CONFERENCE, and Operators Negotiating Committee, Southern Appalachian Joint Wage Conference, and United Mine Workers of America

OPINION

The Operators Negotiating Committee of the Appalachian Joint Conference and the Operators Negotiating

Committee of the Southern Appalachian Joint Wage Conference have reported to the Board that no agreement has been reached with the United Mine Workers of America on any of the issues which the National War Labor Board, in its directive order of May 25th, referred back to the parties for further negotiation.

The principal question so referred was whether the parties could agree upon a reasonable settlement of the claim advanced by the United Mine Workers that the underground workers are lawfully entitled to additional compensation for travel time, under the provisions of the Fair Labor Standards Act.

Since the parties have failed to agree it becomes our duty, under the national no-strike policy and Executive Order #9017 of January 12, 1942, finally to determine this labor dispute.

We have directed the parties to execute new contracts containing all the basic provisions of the old Appalachian agreements, with certain modifications which are specified in the Directive Order. These include a provision for an additional $30.00 of vacation pay as provided for in our directive order of May 25th, and provisions requiring the operators to pay for safety equipment and devices, including electric light and cap rentals, and for blacksmithing and to furnish necessary tools and equipment without charge. The Order does not provide for the payment of any additional compensation for travel time for "portal to portal" pay.

[fol. 153] Portal to Portal Issue:

The Board, in its discussions of this case, has considered the matter of additional compensation for travel time in two aspects, (1) the inequality that comes from basing the pay of all underground workers on the hours worked at their working places in the mines, when the individual workers spend different amounts of time getting from the portal of the mine to their working places and back from the working places to the portal, and (2) the legal claim advanced by the United Mine Workers for additional pay for travel time under the Fair Labor Standards Act.

(1) The inequality that results from basing the pay of all the miners on the same hours worked at their working places, regardless of the amount of time that the individual

worker has to spend in traveling, is an inequality that could be cured only by including in the pay of individual mine workers an additional compensation *according to the amount of time that they actually spent in traveling.* Plans which have that effect are now in use in the iron ore mines of the country and in coal mines in other countries.

In the bituminous mines involved in this dispute the parties have agreed throughout more than fifty years of collective bargaining that wages should be paid on the "face to face" basis; that is, on the basis of time spent at the working places. On July 18, 1940, the Administrator of the Wage and Hour Division of the Department of Labor, following representations made jointly to him by the Operators and the United Mine Workers, expressed the opinion that "the practice of computing working time on a 'face to face' basis in the bituminous mining industry would not be unreasonable" under the provisions of the Fair Labor Standards Act. The Appalachian agreements of 1941 were entered into between the parties in the light of this ruling. They retained the old maximum hours and working time provisions in which compensation was based on the "face to face" principle. The Mine Workers chose at that time "face to face" rather than "portal to portal" pay for their own reasons which they had given to the Wage and Hour Administrator in the letter of July 18, 1940. They agreed to put up with the inequality that comes from the fact that individual mine workers have to spend different periods of time in travel.

When the negotiations for the new contract were initiated in March of this year the mine workers demanded, as they had a right to do, that the new contract should make provision for additional compensation for travel time. Their demand was that the operators should pay for travel time "to conform with the basis and legal requirement for the industry." On August 13, 1941 the United States District Court in Alabama had decided that all time spent underground in iron ore mines was working time and should be included in the computation of the employees' work week under Section 7 of the Fair Labor Standards Act, and on March 16, 1943 this decision was affirmed by the Fifth Circuit Court of Appeals.

[fol. 154] The inequality in the present "face to face" system of payment is measured by the actual time spent by the individual mine worker traveling to and from his

working place in the mine. It cannot be removed by a general increase to all mine workers. After such an increase the inequality would remain just what it was before. Sam Smith who works seven hours at his working place in the mine and has to spend two hours a day getting in and out would still get the same wage as John Jones who works seven hours at his working place in the mine and has to spend only 20 minutes getting in and out.

We have, of course, during our consideration of this dispute, given careful thought to the possibility of working out an agreement which actually takes care of this inequality. We have been stopped by two obstacles either one of which would make impossible the necessary adjustment at this time.

In the first place neither party to the dispute has proposed to us any kind of a plan that would actually take care of this inequality. The only thing that has been suggested is a general wage increase equally applicable to all the mine workers. In our directive order of May 25th, after most careful deliberation, we held that no general wage increase for wage earners could be approved. In the comments accompanying that order we discussed the economic position of the bituminous mine workers and pointed out why we could not approve any general wage increase for them. At a later place in this opinion we have made further reference to this subject, for reasons which appear at that place.

In the second place, the whole economic structure of the bituminous mining industry has been built upon the payment of wages on the "face to face" basis. To now reconstruct the maximum hours and working time provisions applicable to bituminous coal mining, so as to cure the inequality due to different individual travel time, would create utter confusion in the economics and in the wage structure of the industry, which could only adjust itself to this new system over a period of years. The considerations involved in such a change, both economically and with reference to the fair treatment of the individual workers, are so complex that they could be satisfactorily worked out only by a long period of collective bargaining, if at all.

In normal times of peace it would be possible for the interested parties, and for impartial men, to give reasonable consideration to these complex problems, but at the

present time, when the country is engaged in a wartime struggle for its very existence, the uncertainties and disturbances involved in working out such a plan would be intolerable. A time of war is no time to settle long standing and complex questions of this character. This is particularly true, as we pointed out in connection with the north-south differential in the Cotton Textile Cases, when a disturbance of long standing relationships established by years of collective bargaining would require us to dis- [fol. 155] regard our responsibility to stabilize wage rates in conformance with the national stabilization program.

(2) In our directive order of May 25th, after ruling that no general wage increase could be approved, we spoke of the legal claim asserted by the Mine Workers for further compensation under the Fair Labor Standards Act. We referred that claim to the parties for further negotiation as a possible basis for agreement in some approvable wage increase, since payments due under the Fair Labor Standards Act may be approved without regard to the wage stabilization policy defined by the Anti-inflation Act of October 2, 1942. It was, however, made very clear in our directive order of May 25th that any wage increase based upon this claim could be approved, under the wage stabilization policy, only if the amount of the increase were genuinely and reasonably related to the claim advanced by the Mine Workers under the Fair Labor Standards Act. We said that the proposed settlement must be submitted with supporting data "sufficient to enable the Board to determine whether or not it constitutes a genuine settlement of alleged claims arising under the Fair Labor Standards Act, and not an indirect wage increase in violation of the wage stabilization policies."

In the negotiations following our order of May 25th the representatives of the mine workers continued to insist upon a general wage increase of $2.00 a day. No real attempt was made to relate this amount to any amount of compensation that might be due under the Fair Labor Standards Act. The representatives of the mine workers failed to make any report to the Board on these negotiations. The representatives of the operators were unable to submit to the Board any data by which the Board might determine what amount of wage increase would increase would constitute a genuine settlement of the alleged claim.

The mine workers' demand of $2.00 a day was, we were informed, based upon an assumption or estimate that the travel time amounted on the average to an hour and one-half a day; that this travel time should be paid for at the rate of time and one-half because the Appalachian agreements, which provided no payment for travel time, did provide a premium rate of time and one-half for productive working time beyond 35 hours a week. In this way the amount was brought up to an estimated average of $2.25 a day for each underground worker. The United Mine Workers proposed to spread this amount over all the workers including those who did not go underground, and so arrived at the proposed general wage increase of $2.00 for all mine workers. We understand that the Mine Workers subsequently indicated to the Operators a willingness to reduce their demand to $1.50 a day, and that still later in negotiations with the Central Pennsylvania Coal Producers Association there was a tentative agreement upon a further reduction to $1.30 per day.

It is obvious that these figures are out of all proportion to any amount that could possibly be due to the mine workers under the Fair Labor Standards Act, even if the courts should decide all questions in controversy in favor of the [fol. 156] mine workers. The demand is plainly and unmistakably a demand for an "indirect wage increase in violation of the wage stabilization policies," contrary to the Board's directive order of May 25, 1943.

The overtime payment due to an individual mine worker, on the assumption that travel time is working time, under the Fair Labor Standards Act, may be calculated in accordance with the standard method used by the Wage and Hour Division (See Method A in footnote). Under this method the straight-time weekly earnings are divided by the actual hours worked plus the hours spent in traveling to and from the work place to the entrance to the mine. Work and travel hours of 40 and under are compensated at the computed straight-time average hourly rate and hours over 40 at time and one-half the hourly rate. From the sum of straight-time and overtime earnings the actual earnings under the wage contract are subtracted, the remainder constituting the payment required under the Act. For a miner paid at the rate of $1.00 an hour under the Appalachian agreement for work at the face, the extra compensation for a 6-day week for travel time of one hour

or less would be zero and for one and one-half hours would be $1.02. The total liability of any operator under the Fair Labor Standards Act would be the sum of his liability to these workers whose travel time amounted to one hour per day or more. To average the travel time of all miner workers and use that average figure for travel time in the Wage and Hour Division's method of calculation would not measure the operators' liability at all.

Thus, the opportunity we gave to the Mine Workers and the Operators to work out a reasonable settlement of the claim under the Fair Labor Standards Act was not taken advantage of, and they did not reach a settlement. We cannot force upon them a settlement of a lawsuit which we have no power to decide.

As we pointed out in our directive order of May 25, it is not within the province of the National War Labor Board to determine whether or not the law requires payment for all time spent underground in the bituminous coal mines. If the United Mine Workers, or any individual miners seek a settlement of the dispute as to the legal rights of bituminous mine workers to additional compensation under the Fair Labor Standards Act, the Wage and Hour Division of the Department of Labor is the government agency provided for the settlement of such questions subject, of course, to court review as provided by Section 10 of that Act. Our Executive Order #9017 "does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted," and it provides that "nothing herein shall be construed as superceding or in conflict with the provisions of * * * the Fair Labor Standards Act."

Method A:

a. Weekly earnings at straight-time (42 hours x $1.00) = $42.00

[fol. 157] b. Average hourly earnings ($42.00 ÷ 48) = $.875

c. Straight-time earnings for 48-hour week (40 x $.875) = $35.00.

d. Earnings for hours over 40 at time and one-half (8 x $1.312) = $10.50

e. Total earnings for purposes of F. L. S. A. (c ÷ d) = $45.50

f. Total earnings under present wage contract = $45.50.
g. Extra compensation for travel time = 0

As we pointed out in our Directive Order, it is possible at any time, should the parties ever agree to a settlement of this legal claim, for the National War Labor Board to pass upon it and to say whether or not the amount agreed upon is an allowable wage increase representing a genuine settlement of the claim, or a hidden wage increase contrary to the stabilization program. The distribution of the payment involved in any such settlement is a matter for the Wage and Hour Division to approve or disapprove.

Why the Mine Workers' Demand for a General Wage Increase Cannot be Approved

In the directive order of May 25th, we decided that no general wage increase for the mine workers could be approved under the Act of October 2, 1942 and the relevant Executive Orders, Regulations and policies. This national stabilization policy applies, of course, to the mine workers as well as to all other wage earners in the country.

It has been asserted that the mine workers undergo such hardships and earn such low wages that they are entitled to special treatment, out of line with and beyond the limitations of the national stabilization policy. Because of this the Board feels that in this opinion there should be set forth in greater detail the reasons why the mine workers' demand for a general wage increase cannot be approved by the Board.

There are, within the wage stabilization policy, certain circumstances under which special wage adjustments to groups of industrial workers may be approved, even though the wages of these workers have already been increased 15% or more since January 1, 1941.

(1) Wage earners whose wages are insufficient to maintain a decent standard of living may, under this policy, have their wages increased.

But the minimum wage for any mine workers under the present Appalachian agreements is 73.6 cents an hour, and for able-bodied mine workers the minimum is 85.7 cents an hour. That hourly wage rate is certainly above

any level that could be thought of as insufficient to maintain a decent standard of living.

(2) Wage increases may be made to correct relatively low rates within a wage structure where there are sub- [fol. 158] stantial inter-plant inequalities such as to give rise to justifiable dissatisfaction among a particular group of workers whose low wage rates amount to unfair discrimination.

In the Appalachian agreements, however, relative wage rates for different occupations have been carefully worked out by many years of collective bargaining. No objection has been raised by the Mine Workers to these relative rates except in the occupations of greasers, trappers, flaggers, switch-throwers, and slate pickers. This objection has been recognized and taken care of by the Board's Directive Order which provides that all able-bodied workers in these classifications shall be paid not less than .857 per hour and $6.00 per day.

(3) The War Labor Board, under the supplemental directive issued by the Director of Economic Stabilization on May 12, 1943, is authorized to approve within carefully specified limits non-inflationary wage adjustments made with reference to prevailing wage rates in the same industry, or even in other industries where there are comparable occupations. Except in rare and unusual cases such adjustments cannot be above the minimum going wages found by the Board to be sound and tested going rates paid for similar occupations in the labor market area. The adjustments must in all ordinary cases be made within the existing price structure or within the existing levels of production cost. If the Board in an exceptional case approves wage adjustments which affect price ceilings or increase production costs above the levels prevailing in comparable plants or establishments, then such adjustments do not become effective unless and until they are also approved by the Director of Economic Stabilization.

There is no basis for wage increases to the bituminous mine workers under this inter-plant or inter-industry rule.

Basic wage rates are established throughout the bituminous coal industry by negotiated agreements based fundamentally upon the agreed wage rates in the Appalachian area. There are, therefore, no higher wage rates for similar occupations anywhere within the bituminous coal in-

dustry, upon which the Board could base an approval for a wage increase to these mine workers.

In our directive order of May 25th, the hours and earnings of bituminous coal miners were compared with those in other industries. It was pointed out that when the increased demand for coal to meet war requirements and the arrangements for operating the mines on a 6-day week are taken into account, the hourly, weekly, and annual wages of the bituminous coal miners make a very favorable showing with similar earnings reported for industrial workers in other industries.

As we said in the comments accompanying that directive order, the mine workers have already received an average increase in straight-time hourly earnings of 18.2 percent since January 1, 1941. With the provision for a 6-day week and the war time demand for bituminous coal, the mine [fol. 159] workers in March 1943 were able to secure an average weekly take-home of $42.97 for a work week of 38.3 hours which is 65.3 percent greater than their average weekly take-home in January 1941 when they averaged 29.7 hours per week. Most of this increase was due to the substantial rise in weekly hours of work. "Assuming that this increase of weekly hours of work will continue through 1943, under the operation of the 6-day week and the war time demand, it is estimated that the mine workers' average annual income for 1943 will be over $2,150 which is 77.4 per cent greater than in 1940 and 23.8 per cent greater than in 1942."

Taking the industry as a whole, mine workers under the 6-day week who, as in March 1943, work about 38 hours per week at the hourly rates provided for in the Appalachian agreements as amended by the Directive Order of the Board, may expect weekly earnings which will exceed their weekly earnings in March 1941—just prior to the April 1st wage increase of $1.00 or $1.40 a day—by 60.5 percent. Measured in terms of the increases not merely in food but in all the items which go to make up *in terms of the increases not merely in food but in all the items which go to make up* the mine workers' cost of living, this increase amounts to 32.3 percent above March 1941.

It is quite true that these figures are statistical averages without much appeal to the individual worker who has difficulty in making both ends meet. But it cannot be overlooked that these statistical averages truly reflect the present

economic conditions of the workers in the bituminous coal industry, as compared with the conditions under which they have heretofore lived, and as compared with the wage rates and incomes of workers in other industries.

There is no doubt that the mine workers have in the past suffered very great hardships from low wages and substandard living conditions, but in the period since 1932—the low point of the pre-war depression—their average weekly earnings have risen progressively step by step from a deeply substandard level of approximately $14.00 a week in 1933 to approximately $43.00 a week in March 1943 which puts the mine worker up among the higher paid workers in the war industries.

The further wage increase of $2.00 a day demanded now by the Mine Workers is an additional increase of 28.6% on top of the average increase of 18.2% which these wage earners have already received since January 1, 1941, or a total increase of 46.9%.

It is obviously impossible for the War Labor Board to approve any such increase for the mine workers under the national wage stabilization policy. To approve it would fly in the face of decision after decision of this Board in which we have had industries of the country.

Any such departure from the general rule would destroy the whole wage stabilization program. It would defeat its own ends. The resulting increases in costs of production could only have the effect to further increase all prices, in- [fol. 160] cluding particularly farm and food prices, to levels which would nullify the wage increases. It would expose the mine workers themselves to a renewed danger that their payroll dollars would be reduced to small change before they get to the grocery store.

Negotiating Conditions Insisted Upon by the United Mine Workers:

The War Labor Board cannot fail to note that, by the insistence of the United Mine Workers, the negotiations for the new Appalachian Agreements have been carried on under conditions which violate the national no-strike agreement and are in themselves a defiance of the national wage stabilization policy.

The effect of the national no-strike agreement has been, in all other labor disputes in all other industries in America,

that the War Labor Board has been able to carry on its consideration of the dispute free from the coercive pressure that results in war time when vital war production is interrupted or threatened with interruption.

In normal times a strike or a threat to strike is a recognized and permissible accompaniment to collective bargaining. The National Labor Relations Act provides that "nothing in this Act shall be construed so as to interfere with or impede or diminish the right to strike." In the national no-strike agreement this recognized right was deliberately laid aside by American labor for the duration of the war. The War Labor Board was created as a war agency empowered, by agreement, finally to determine industrial disputes without interruption of war production.

It is one thing to use against an employer the economic pressure of a strike in peace time. That pressure has normally an effect limited to economic considerations affecting the individual employer or group of employers. In time of war an interruption of vital war production has an entirely different effect. It becomes a coercive pressure with all the intensity of a destructive attack upon the national welfare. It is for that reason that, in the statement unanimously adopted by the War Labor Board interrupting war production—

In this dispute the United Mine Workers, under the leadership of Mr. Lewis, have repudiated the no-strike agreement and insisted upon coming to the bargaining table with their demands in one hand and in the other hand the threat of a strike in an industry which affects the war production more vitally, perhaps, than any other industry. They have sought to use that threat, including the actual interruption of essential war production, to secure for themselves a favored position at a time when all responsible labor organizations in America have loyally adhered to the no-strike pledge.

The War Labor Board will not participate in any such proceedings, and it will not, under such pressure, approve for the mine workers a wage increase which, for the vital purpose of protecting the wage-earner's dollar, has been denied to wage-earners in other industries.

Opinion by: William H. Davis, Chairman.

[fol. 161] NATIONAL WAR LABOR BOARD

Case No. 111-1284

In the Matter of OPERATORS NEGOTIATING COMMITTEE, APPALACHIAN JOINT CONFERENCE and Operators Negotiating Committee, Southern Appalachian Joint Wage Conference, and United Mine Workers of America

Washington, D. C.,
June 18, 1943.

DISSENTING OPINION

The majority of the Board states that, "since the parties have failed to agree it becomes our duty, under the national no-strike policy and Executive Order No. 9017, finally to determine this labor dispute." Instead of finally determining the dispute, the Board has launched upon a legalistic justification for not finally determining it. Instead, the issues now become more confused than ever, with no final determination in sight for a long time to come.

Although the majority states that "When the negotiations for the new contract were initiated in March of this year the mine workers demanded, as they had a right to do, that the new contract should make provision for additional compensation for travel time", and although the demands culminated in a dispute which vitally affected the entire war effort, this Board, constituted specifically for the purpose of "finally determining" all disputes affecting the war effort, now, in its majority decision, refuses to determine whether any additioanl compensation for travel time or portal to portal pay is due. Many reasons are assigned by the majority of the Board for its rufusal to determine the issue over travel time, but the basic reason assigned is that the Board has no jurisdiction because of conflict with the Fair Labor Standards Act. However, the Board does not hesitate to state that it must approve any attempted settlement of a claim under the Fair Labor Standards Act. Thus, while it avoids determining the question of whether portal to portal increases can be paid on the excuse that so to do would be in excess of its jurisdiction because in conflict with the Fair Labor Standards Act, it nevertheless asserts the right to approve any settlement of a claim under the Fair Labor Standards Act. If it can

approve the settlement without conflict with the Wage-Hour Act, it certainly has the power to determine in the first instance whether increases are due.

Heretofore, the Board has consistently avoided resort to [fol. 162] technicalities and narrow legalisms in an effort to fulfill its duty of finally determining all labor disputes affecting the war effort that come before it. Assuredly, if any labor dispute affects the war effort, it is the present one. In the past the War Labor Board has consistently refused to adopt a technical and narrow construction of either the President's Executive Order which established it and defined its jurisdiction, or the provisions of other laws, including the National Labor Relations Act. The function of this board is to assist in the effective prosecution of the war and to prevent interruptions which threaten to impair this function. Dean Wayne L. Morse, Public Member of the War Labor Board, in an address to the Federal Bar Association on September 17, 1942, summed up this policy in the following sentences:

> "The National War Labor Board has the duty of settling any labor dispute which threatens to 'interrupt work which contributes to the effective prosecution of the war.' Thus, it can be seen that the possible effect of a given labor dispute upon the war effort is the only criterion to be consulted in determining whether the War Labor Board should properly take jurisdiction of the case. It does not matter what the issues are nor who the parties are."

What has brought about a change from this policy will be difficult to understand.

The policy of the Board not to be technical, and even to adjudicate cases involving issues which are within the jurisdiction of other tribunals was demonstrated in several cases.

In the *Sperry Gyroscope* case (Case No. 70), the company had been ordered by the National Labor Relations Board to disestablish an independent union. Although the company appealed to the United States Circuit Court, the War Labor Board ordered the company to recognize another union for the purpose of discussing grievances with its members.

In the *Western Cartridge Company* case it was argued that the company was petitioning the Circuit Court of Ap-

peals for review of the order of the National Labor Relations Board disestablishing an independent union. Yet the War Labor Board took a broad view and ordered the company not to recognize the disestablished union. In that case it went so far as to order the company to reinstate twenty employees pending the National Labor Relations Board's determination of whether the employees had or had not been discharged for union activities.

In the case of *Frank Foundries* (Case No. 95), the War Labor Board adjudicated the subject of discharges of employees, a subject within the jurisdiction of the National Labor Relations Board.

In these cases the Board established the policy that it [fol. 163] would not permit itself to be hedged tightly in by the jurisdiction which was vested in another tribunal.

A similiar approach on the part of the Board may be found in the *Sun Shipbuilding and Drydock Company* case (No. 427) and *Shell Oil Company* (No. 92).

If we were to resort to legalism, then it would seem that on the basis of the present decision of the majority the challenge to the War Labor Board's jurisdiction over the subject matter of the cases aforereferred to was quite proper in the light of the interpretation of the literal language of the President's order establishing the War Labor Board. The War Labor Board, however, looked beyond the literal language of Executive Order 9017 and focused its vision on the basic purpose of the Order. The Board realized that only by such means could it fulfill its basic purpose of preventing labor disputes from interfering "with work which contributes to the effective prosecution of the War."

It is inferred in the majority decision that the miners do have a justifiable basis for asking increases in some amount to compensate for the time spent in traveling from the entrance to the mine to the place of work. For years the miners, engaged in one of the most dangerous of occupations, and in ordinary times earning barely enough to sustain themselves and their families, have suffered this injustice—have, in effect, spent valuable hours in the operators' behalf without being compensated for it. Instead of permitting this injustice to continue, it would appear that this Board, when a dispute concerning the amount of additional compensation owing the miners for additional time spent in working has arisen, which dispute threatens

to affect the war effort, should assume jurisdiction to determine the issues.

When this Board directed the parties to resume bargaining respecting travel time, or portal to portal pay, the clear implication of such direction was that if the parties could not agree on the sum to be allowed for portal to portal pay, this Board, regardless of the reservations set forth in the Order of May 25th, would and could determine that issue. No other conclusion can be arrived at by reasonable men.

The majority points out that, unless travel time is compensated for on an individual basis, inequalities would result. There are practical difficulties attendant upon attempting to determine thousands of individual cases. But the miners who are most immediately concerned have agreed to the principle of compensation on a general basis, and that it is generally a common practice to settle numerous claims, whether legal or economic, on an overall basis. This argument of the majority is no reason for the Board not to take jurisdiction or not to attempt to work out some compensation which will, under all of the circumstances, achieve justice for those concerned.

The majority argues that any attempt to award portal to portal compensation would upset the whole economic [fol. 164] structure of the bituminous mining industry, and the considerations are so complex as to require long periods of collective bargaining to work them out. The fact that the operators and the miners have already apparently agreed on certain adjustments indicates that the confusion and dislocation feared by the majority is not a factor which is insurmountable. Further, in time of war emergency issues must be met as they arise and the dislocations and adjustments can be provided for in times of peace when time for fuller and more detailed study is available. To a greater or lesser extent economic confusion always prevailed in this industry.

The majority contends that the principles enunciated in the "Little Steel" formula is concerned with increases up to a designated percentage, on time worked and being paid for. Thus, a legitimate labor dispute over which we have jurisdiction is presented for determination.

We agree with the majority of the Board in upholding the necessity for honoring the no-strike pledge by all labor, but that does not absolve the Board from the necessity to

perform its duty and finally determine the issues revolving around just grievances of the miners in this labor dispute.

We believe that the issue of compensation for travel time, or portal to portal pay, is a labor dispute over which this Board has jurisdiction, and we believe that an order allowing compensation to the miners for such travel time is not violative of the orders, rules and formulas governing this Board now in force and effect. An order should be made allowing the miners reasonable compensation for travel time.

(S.) George Meany, Robert J. Watt, Van A. Bittner, R. J. Thomas, Delmond Garst, Martin P. Durkin, John Brophy, Matthew Woll.

[fol. 165] Special Concurring Opinion by Wayne L. Morse of WLB

This writer concurs in all the views expressed in the majority opinion. However, for purposes of emphasis, he wished to make the following comments:

1. In the Directive Order of May 25, 1943, the Board ruled that under the wage stabilization policies established by the Act of Congress of October 2, 1942, and Executive Orders 9250 and 9328, the Mine Workers are not entitled to a general increase in the instant case. The record is clear that the straight time hourly wage rates for miners have increased more than 15 per cent since January 1, 1942, and, therefore, the miners are not entitled to a general wage increase under the "Little Steel" formula. Neither are they entitled to a general wage increase to correct substandards of living because the wage rate of $1.00 per hour with resulting weekly earnings under the existing six-day-week arrangement of more than $40.00 cannot be considered substandard wages.

There is no evidence in the record which would justify a general wage increase in this case under that criterion in the National wage policy which permits of increases to correct gross inequities. To the contrary, the record shows that the hourly rates and the earnings of the miners under present production demands compare favorably with wages in other industries. It is true that the wages in a few other industries such as shipbuilding, automobile, and petroleum

refining, are higher, but when the wages of the Mine Workers are compared with American industry generally, it cannot be said that any gross inequities exist which justify giving a general wage increase at this time in excess of the "Little Steel" formula.

Likewise, a general wage increase cannot be justified on the ground that it is needed to aid in the effective prosecution of the war because, as this writer stated in his decision of October 16, 1942, in the Ford case:

> "It would be a reflection upon the patriotism of the * * * employees to attempt a justification of a general wage increase upon the basis of any argument that such an increase should be granted * * * to aid in the effective prosecution of the war. An 'all-out' production effort on the part of American workers does not have to be bought or bribed by inflationary general wage increases, which in turn, endanger our war economy and in the long run, decrease real wages."

2. In the Board's decision of May 25, 1943, it pointed out that any wage adjustments made by the parties in compliance with the Fair Labor Standards Act would be consistent with the National wage stabilization policy. It told the public that any composition which the parties made in settlement of any legal claim under the Fair Labor Standards Act as to travel time from portal to portal would be approved if supported by data showing that the com- [fol. 166] position was a genuine settlement of an alleged legal claim and not an indirect wage increase in violation of the Board's wage stabilization policies.

However, the Board made it perfectly clear that it is not within the province of the Board to determine whether the Fair Labor Standards Law requires payment for all time spent under— Hence the Board referred to the parties for negotiations the matter of adjusting the union's legal claim to compensation for travel time from portal to portal. Unfortunately, the parties were unable to reach any agreement on the issue.

Therefore, the Board must rule that this legal question is one for court determination. If the War Labor Board would attempt to rule whether or not the Mine Workers are entitled to travel time as a matter of law under the Fair Labor Standards Act, it would be exceeding its jurisdic-

tion of the courts under the Fair Labor Standards Act. This the Board will not do.

3. It should not be overlooked that the President of the United Mine Workers of America has rested his claim to portal to portal travel time pay on the theory that the Mine Workers are entitled to such pay as a legal right. He has cited the decision of the Fifth Circuit Court of Appeals in the Tennessee, Coal, Iron, and Railroad Company case, decided March 16, 1943, in support of this contention. However, Mr. Lewis' demand in fact has not been for pay for the actual travel time spent by the individual miner underground, but for an adjustment of travel time pay to be distributed in an equal amount to all the Mine Workers, including those above and below the ground, irrespective of whether the individual Mine Worker actually travels underground.

Thus, Mr. Lewis' demand has not been for compensation for any legal claim that the individual miners may have, but rather, it is a demand for a wage increase for all the miners in excess of the wage stabilization policies of the Board couched in terms of portal to portal pay. It is a demand for a form of payment which could not possibly be collected under the Fair Labor Standards Act, because the very decision which the representatives of the Mine Workers cite makes clear that the portal to portal travel time pay allowed in that case is individual to the employee who travels underground in accordance with the time which he actually travels.

It would be thoroughly dishonest for the War Labor Board in the name of portal to portal pay to grant a wage increase to all miners, including those who travel underground and those who do not. Any pay which the courts might decree the individual miners had coming for the actual time they travel underground could not be ordered by the War Labor Board to be averaged among all the mine workers in the absence of an agreement between the parties to that effect. Any such award by the Board would be recognized for what it really would be; namely, an unjustifiable rationalization for breaking the wage stabilization policy of the Board in order to satisfy the demands of the miners for a general wage increase. Such an action would open the flood gates of general wage increases in excess of the wage stabilization policies of the Govern-

ment because if the United Mine Workers of America should succeed in securing such a wage increase from the Board, many other unions would attempt, with justification, to adopt tactics and demand general increases under one label or another.

[fol. 167] Throughout the history of this case, the War Labor Board has taken the position that the same policies, the same rules, and the same procedures must be applied by the War Labor Board to this case as to all other cases which have come before the Board. It has followed the principle that it must decide all cases on the theory that this is a government of one law and one flag, with equal justice to all. Having found that the facts of the case do not justify a general wage increase under any of the criteria set forth in the Executive Orders which define the wage stabilization policies of the Government, the Board does not propose to circumvent those policies by granting a general wage increase indirectly or by subterfuge under the guise of portal to portal pay averaged over all the workers.

4. Lastly, this writer wishes to point out that the Board has not been diverted from applying the same rules to this case as to all other cases by the Union's resort from time to time to economic action and threats of economic action. It has insisted on seeing to it that the miners receive all that they are entitled to under the wage stabilization policies of the Government in accordance with the record before it, but it has held fast to the principle that they should not receive more than they are entitled to, even though they threaten the use of economic power.

As a result of the economic action taken by the United Mine Workers of America and their officers in violation of the No-strike pledge, there is one issue which has developed in this case which surpasses all others in significance so far as the security of this Nation is concerned; namely, whether or not in the midst of a war the Mine Workers will abide by the same rules and the same laws which are applicable to all other groups. If this issue involving the supremacy of law should ever be sacrificed at the altar of expediency or under coercion of power, the damage to the war effort would be much more costly, not only to national morale, but also to actual war production than would be the losses, unthinkable as they are, which would result from

a coal strike. It is one issue which cannot be compromised if we are to retain a government by law. This writer is confident that 130,000,000 Americans do not want it compromised in this case or in any other.

Opinion by: Wayne L. Morse.

[fol. 168] PLAINTIFF'S EXHIBIT NO. 38-a

Office of War Information, National War Labor Board

For immediate release
June 18, 1943

The following statement was made today by Chairman William H. Davis of the National War Labor Board, in connection with the Board's decision in the dispute involving the bituminous coal operators and the United Mine Workers of America:

"(1) The Mine Workers asked payment for travel in the mines.

"(2) The Mine Workers have throughout many years of very real collective bargaining agreed that they shall be paid for the work they do on the basis of hours worked, at their working places in the mines, without regard to the travel time between the portal of the mine and the working places. In July, 1940, the Mine Workers and the operators jointly asked the Administrator of the Wage and Hour Division to approve that 'fact to face' method of payment as a compliance with the same 'fact to face' basis of payment was incorporated by mutual agreement in the Appalachian Agreements which became effective April 1, 1941.

"(3) It would be possible to correct any inequality that results from basing the pay of all the miners on the hours worked at their working places, regardless of the amount of time that the individual worker has to spend in traveling. The basis of payment might be for all hours during which the miner was underground; that is, from portal to portal. That has been done in other mining industries. It would be a radical change in the bituminous coal industry and would undoubtedly create so much confusion that production would be very seriously reduced and it would probably take many

months of honest collective bargaining to develop any such method for the coal mines that would not bring about an intolerable economic condition of many of the mines and unacceptable conditions for many of the mine workers.

"(4) The United Mine Workers have not proposed to change the 'face to face' basis of payment. On the contrary they have proposed merely to increase the hourly rate under the present contract system. They would not, of course, correct that inequality which comes from varying times of travel, by different mine workers. Sam Smith who works 7 hours at his working place in the mine and has to spend two hours a day getting in and out would still get the same wage as John Jones who works 7 hours at his working place in the mine and has to spend only 20 minutes getting in and out. It would not be in fact payment to the mine workers for portal to portal. It is merely a general wage increase supported by the argument that the mine workers, although they are willing to continue to put up with the inequality that comes from 'face to face' payment, think they ought to have a general wage increase because on the average they will spend a certain amount of time in travel.

"(5) In its Directive Order of May 25, the Board held that it could not, under the National Stabilization Policy [fol. 169] grant a general wage increase to the mine workers. It pointed out that it had already received more than the 15% increase in straight-time hourly rates allowed under the Little Steel formula. It also pointed out that under the present six day week arrangement in the great demand for bituminous coal the weekly and annual earnings of the miners in 1943 would compare very favorably with those of wage earners in other important war industries. In the opinion accompanying the directive order today, we have referred again to this matter. We have pointed out that the minimum for any mine worker's under the present Appalachian agreement is $.736 and for able-bodied mine workers the minimum is $.857 per hour. Of course these minimum rates are above substandard of living rates. It is certainly true that in the past the mine workers have suffered very great hardship from low wages and substandard living conditions. In 1933 the mine workers wages have been progressively increased until in March of this year, 1943, with the six day week and the great war time demand for bituminous coal, their weekly earnings are up to approximately $43.00

per week, which puts them up with the higher paid workers in the war industry. In comparison with January 1, 1941, the average weekly payroll of the mine workers has increased more than 65 per cent. This increase is largely due to an increase in the number of hours per week. If this increase continues in 1943—and there is no reason to suppose that it will not, it is estimated that the mine workers' average annual income for 1943 will be over $2,150.00, which is 77.4% greater than in 1940 and 23.8% greater than in 1942.

"It is obvious that if the War Labor Board approved any general wage increase for the mine workers under these circumstances it would fly in the face of decision after decision of the Board in which we have had to limit the wage increases allowed to the wage earners in most of the great war industries of the country. It would mean that we would be retreating form the whole wage stabilization policy and we would have to set up a new line of stabilization that would permit us to extend similar increases to the wage earners in other industries in which wage increases have been refused under the present policy. The resulting increase in costs of production could only have the effect to further increase all prices including particularly farm and food prices to levels which would nullify the wage increases. It would really mean giving up the fight to protect the value of the wage earners' dollar.

"(6) Having denied the general wage increase in its directive order of May 25, the Board pointed out that the claim of the Mine Workers for travel pay involved the assertion of a legal right under the Fair Labor Standards Act. A legal claim of that kind, if it has any foundation at all, is an unknown liability hanging over the business of every bituminous coal operator, and there is nothing more destructive of business than hidden liens and unknown liabilities. We pointed out that if the parties could honestly settle this legal claim on a basis genuinely related to what might legally be recovered under the Fair Labor Standards Act, the War Labor Board would be able to approve the payment of the amount of money involved in the settlement because the Statutes, and Executive Orders, under which the Board operates permit, of course, the payment to any worker of any additional compensation to which he is entitled by law.

[fol. 170] "We extend to the parties an opportunity to try to settle this legal claim by agreement, but they have been unable to do so. We cannot force upon them a settlement of a lawsuit which we have no power to decide. Therefore, we have been unable to approve any further wage increase to the mine workers than the increase in vacation pay and the payment by the operators for safety equipment and devices, blacksmithing, and necessary tools and equipment, which we approved in our directive order of May 25."

[fol. 171] PLAINTIFF'S EXHIBIT No. 38-b

National War Labor Board

Washington, D. C.,

June 18, 1943.

Case No. 111-1284

In the Matter of OPERATORS NEGOTIATING COMMITTEE, APPALACHIAN JOINT CONFERENCE, and Operators Negotiating Committee, Southern Appalachian Joint Wage Conference, and Central Pennsylvania Coal Producers' Association, and United Mine Workers of America

DIRECTIVE ORDER

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of January 12, 1942, the Act of Congress of October 2, 1942, and the Executive Orders and Regulations issued thereunder, the National War Labor Board hereby directs that:

A. Contracts:

I. Except as hereinafter provided and unless changed by mutual agreement of the parties thereto, the following agreements and memoranda shall remain in effect to and including March 31, 1945:

(1) The Appalachian Agreement of April 1, 1941.

(2) The Six-Day Supplemental Agreement thereto, dated January 29, 1943.

(3) The "Memorandum of Understanding Affecting Vacation Clause of Appalachian Joint Agreement, Executed in Washington, D. C., on June 19, 1941."

(4) The Southern Wage Agreement of July 5, 1941.

(5) The Six-Day Supplemental Agreement thereto, dated February 10, 1943.

(6) The "Memorandum of Understanding Affecting Vacation Clause of Southern Wage Agreement, Executed, in Washington, D. C., on July 5, 1941."

(7) The "Explanatory Memorandum in re the Appalachian Wage Agreement, dated May 12, 1939, Made by John L. Lewis, President of the United Mine [fol. 172] Workers of America, to the Appalachian Joint Conference."

(8) All District Agreements underlying either the Appalachian Agreement of April 1, 1941, or the Southern Wage Agreement of July 5, 1941.

II. The Appalachian Agreement of April 1, 1941, and the Southern Wage Agreement of July 5, 1941, will be amended as follows:

(1) The first paragraph of the Preamble of the Appalachian Agreement of April 1, 1941, shall be amended to read as follows:

"This Agreement, made the — day of ——, 1943, between the Georges Creek & Upper Potomac Coal Association, Somerset County Coal Operators' Association, Western Pennsylvania Coal Opeperators' Association, Ohio Coal Association, Michigan Coal Operators' Association, Northern Panhandle of West Virginia Coal Operators' Association, Northern West Virginia Coal Association, voluntary associations on behalf of each member thereof and other companies signatory hereto, hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America, and Districts 2, 3, 4, 5, 6, 16, 17, 19, 24, 30, and 31, hereinafter referred to as the Mine Workers and on behalf of each member thereof, party of the second part. (New Districts of the United Mine Workers may be established in this territory.)"

(2) The first paragraph of the Preamble of the Southern Wage Agreement of July 5, 1941, shall be amended as follows:

"This Agreement, made the — day of ——, 1943, between the Southern Coal Producers' Association representing individual coal operators, members thereof, the Operators' Association of Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Association, Harlan County Coal Operators' Association, Kanawha Coal Operators' Association, Logan Coal Operators' Association, New River Coal Operators' Association, Pocahontas Operators' Association, Winding Gulf Operators' Association, Greenbrier Coal Operators' Association, Upper Buchanan Smokeless Coal Operators' Association, Virginia Coal Operators' Association and Southern Appalachian Coal Operators' Association, voluntary associations on behalf of each member thereof hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America, and Districts 17, 19, 28, 29, and 30, hereinafter referred to as the Mine Workers and on behalf of each member thereof, party of the second part. (New Districts of the United Mine Workers may be established in this territory.)"

(3) The provisions relating to *Basic Tonnage Rates* in each Agreement shall be amended by striking out the final paragraph thereof, "Yardage and deadwork rates in all Districts shall be increased fifteen per cent (15%)"; provided, however, that such increases are already in effect.

(4) The provisions relating to *Vacations with Pay* in each Agreement shall be amended to substitute, at the appropriate places therein, "July 3, 1943" for "June 28, 1941"; "July 12"; "fifty" for "twenty"; "$50.00" for "20.00"; "1944" for "1942"; "July 1" for "June 27"; "July 10" for "July 6".

[fol. 173] (5) The Miscellaneous Provisions in each Agreement shall be amended to read as follows:

"The Operators shall furnish necessary tools to day and monthly men without charge. They shall also furnish necessary tools or a money equivalent to mine workers employed at tonnage, yardage or footage rates.

"Safety equipment and devices, including electric

cap lamps, shall be furnished by the Operators without charge. This shall not include, however, personal wearing apparel, such as hats, clothing, shoes and goggles.

"No charge shall be made for blacksmithing.

"Matters affecting cost of explosives and house coal are referred to the District Conferences.

"To the extent it has been the custom in each District, all bottom coal shall be taken up and loaded by the Mine Worker.

"The cutter shall cut the coal as directed by the operators.

(6) The Protective Wage Clause in each Agreement shall be amended by adding thereto the following sentence:

"For the duration of the War no strike shall be either maintained hereunder."

It was brought to the Board's attention by Representatives of the Operators at the hearing on June 10 that the Mine Workers had insisted upon retaining in the Appalachian Agreement and in the Southern Wage Agreement the so-called "Protective Wage Clause." This clause provides that:

> "If the United Mine Workers make a wage agreement during said period (the period of the Agreement) covering wages or working conditions with any person, association, or district within the * * * area on a basis more favorable than the above (more favorable than the terms and conditions recited in the Agreement), then this Agreement shall be modified so that all parties to the * * * Agreement shall receive all the benefits of such more favorable agreement."

The effect of this Clause is that if any Operator agrees to a wage increase, the amount of that increase is not binding upon him unless all other operators agree to the same wage increase. The sound purpose of this is to insure equal wage rates throughout the competitive areas.

To implement this sound provision the Protective Wage Clause goes on, however, to provide that:

> "The International Union, United Mine Workers of America, reserves the right to call and maintain strikes

throughout the entire * * * area when necessary to preserve and maintain the integrity and competitive parity of this Agreement. Such strikes shall not be [fol. 174] deemed a violation of this Agreement. The International Union will give reasonable notice to all parties of any such action."

When they now insist upon this provision, the United Mine Workers are insisting that they may be free to call a general strike notwithstanding the no-strike provision of the Agreements and notwithstanding the National No-Strike Agreement and the declared policy of the nation based on that No-Strike Agreement.

The Board has, therefore, ordered that for the duration of the War no strike shall be either called or maintained under this Clause.

(7) The provision relating to *Appalachian Joint Conference* in the Appalachian Agreement of April 1, 1941, and the provisions relating to *Southern Wage Conference* in the Southern Wage Agreement of July 5, 1941, shall be amended to provide for such Conferences in March 1945.

(8) Each Agreement shall contain the following provision relating to *Leased Mines:*

"The Operators agree that they will not let any operating mines subject to this Agreement as a subterfuge for the purpose of avoiding the provisions of this Agreement."

(9) Each Agreement shall contain the following provision relating to Duration of Agreement.

"This Agreement shall be effective as of April 1, 1943, and shall continue in effect to and including March 31, 1945, except as to general wage rates, which may, on thirty (30) days' notice from either party be reopened for negotiation at the end of the first contract year. The foregoing sentence shall not preclude the parties from mutually agreeing at any time during the term of this Agreement, on changes in general wage rates, subject to such approval by the appropriate governmental agencies as may be required by the Act of Congress of October 2, 1942, and the Executive Orders and Regulations issued thereunder. Further-

more, if at any time during the term of this Agreement a significant change occurs in governmental wage policy, either party shall have the right to request negotiations on general wage rates."

(10) The final two paragraphs of *Schedule A* in each Agreement shall be amended to read as follows:

"Cutting rates on track mounted machines shall be those provided in the various District Agreements effective April 1, 1941."

(11) The provisions relating to *Schedule B* in each Agreement shall be amended as follows:

(a) Under the heading, "General Labor Classifications, Inside," the following sentence shall be added:

"Able-bodied labor employed as Greasers, Trappers, Flaggers, Switch Throwers shall be paid at a rate not less than $.857 per hour and $6.00 per day." [fol. 175] In the District Agreements the parties, without further approval of the Board, may agree to pay ablebodied labor employed as Greasers, Trappers, Flaggers, and Switch Throwers, the rate paid to Inside Unclassified Labor, namely, $.966 per hour and $6.75 per day.

(b) Under the heading, "General Labor Classifications, Outside," the following sentence shall be added:

"Able-bodied labor as Slate Pickers shall be paid at a rate not less than $.857 per hour and $6.00 per day."

(c) The provision as to Strip Mine Wages shall be amended to read as follows:

"Mine workers employed in strip mines or pits shall be paid as provided in the various District agreements effective April 1, 1941."

III. The *Memoranda of Understanding Affecting Vacation Clause,* referred to above shall be amended to read as follows:

"In the interest of the National War effort, it is agreed that the vacation period shall be eliminated in the year 1943 without prejudice to or modification of

the existing vacation clause of the Agreement. This arrangement shall in no wise affect the payment of $50.00 to be made by all coal companies to each individual in conformity with the terms of the Agreement.

"The above payment to individual Mine Workers, entitled to vacation, shall be made at the option of the employing coal company, except that in all cases, full payment of the amount prescribed shall be made not later than the last pay day occurring in the month of June, 1943.

"The vacation payment for the 1944 period shall be made on the last pay day occurring in the month of June of that year."

IV. The Six-Day Supplemental Agreements referred to above shall be amended to include the following paragraphs:

"All employees at mines working six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual workmen during the week for the purpose of denying them six days work is prohibited during the term of this Supplemental Agreement. This shall not, however, be construed as a guarantee to give each employee work for six days per week where work is prevented by reasons of breakdowns, accidents, operating requirements, unsafe conditions, or for reasons beyond the control of management.

"Upon the cessation of hostilities in the War, the workweek shall automatically revert to five days."

V. The provisions of the Appalachian Agreement of April 1, 1941, of the Six-Day Supplemental Agreement thereto, dated January 29, 1943, of the underlying District No. 2 Wage Agreements, of the "Memorandum of Understanding Affecting Vacation Clause of Appalachian Joint Agreement, Executed in Washington, D. C., on June [fol. 176] 19, 1941, of the "Explanatory Memorandum in re Appalachian Wage Agreement dated May 12, 1939, Made by John L. Lewis, President of the United Mine Workers of America, to the Appalachian Joint Conference," as such agreements and memoranda have been amended above, shall govern the collective bargaining relations between

the Central Pennsylvania Coal Producers' Association, and the International Union, United Mine Workers of America, and District 2, United Mine Workers of America to and including March 31, 1945.

B. Other Issues:

1. Spotting of Cars:

In keeping with the provisions relating to District Conferences in the Appalachian Agreement of April 1, 1941, and the Southern Wage Agreement of July 5, 1941, the demand of the Mine Workers that the Operators "be responsible for delivering mine cars to and from the miners' working places" shall be referred by the parties to the District Conferences for disposition in accordance, so far as practicable, with the opinion expressed by the Board in its Directive Order of May 25.

II. *Portal-to-Portal*

The demand of the Mine Workers that "the maximum Hours and Working Time provisions be amended to establish portal-to-portal for starting and quitting time for all underground workers" is hereby denied.

The Mine Workers remain free to press their demand before the Administrator of the Fair Labor Standards Act and in the Federal Court; and the Operators retain their rights to seek pertinent administrative and court rulings.

The parties also remain free to agree to a settlement of their prospective lawsuit. If they would agree to a settlement, the Board, as the agency of government charged with administration of the wage stabilization program, will rule whether the agreement is a genuine settlement of the lawsuit compatible with the stabilization program.

(S.) William H. Davis, Chairman, George W. Taylor, Frank P. Graham, Wayne L. Morse, George H. Mead, Cyrus S. Ching, Almon E. Roth, Horace B. Horton.

Dissenting: (S.) Van A. Bittner, John Brophy, George Meany, Robert J. Watt. (Seal.)

[fol. 177] PLAINTIFF'S EXHIBIT NO. 39

ILLINOIS COAL OPERATORS ASSOCIATION

and

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and DISTRICT NO. 12, UNITED MINE WORKERS OF AMERICA

SUPPLEMENTAL AGREEMENT

It is hereby agreed by and between the Illinois Coal Operators Association, the International Union, United Mine Workers of America, and District Number 12, United Mine Workers of America, that the Wage Agreement between the above named parties, made and entered into as of April 1, 1941, and effective to and including March 31, 1943, as heretofore amended and supplemented by Supplemental Agreement, dated February 11, 1943, be and it hereby is extended from April 1, 1943 to and including March 31, 1945, upon the same terms and conditions therein contained, as hertofore so amended and supplemented, except as follows:

1. By reason of the emergency of war and as a contribution to the public welfare it is agreed that an additional one hour per day work time shall be added to the present basic seven hour workday making an eight hour operating shift for such time unit, except when lack of market demand, breakdown of equipment, accidents, shortage of transportation, acts of God, or other causes beyond the control of the operator or operators prevent: *Provided*, however, that lack of market demand shall not permit the operators to operate on less than an eight hour shift. The established rates of pay shall be continued for the first seven hours of each operating day except the sixth operating day of each week, and time and one-half and rate and one-half shall be paid for the eighth hour of each work day except the sixth operating day of each week; and for all hours worked on the sixth operating day of each week time and one-half and rate and one-half shall be paid. This paragraph shall not be construed to require payment of time and one-half or rate and one-half on Saturday if the individual mine worker has voluntarily laid off on Monday, Tuesday, Wednesday, Thursday, or Friday, of such week.

All employees at mines working six days per week shall be given a fair and equal opportunity to work on each of

such six days. Laying off individual mine workers during the week for the purpose of denying them six days' work is prohibited during the term of this Supplemental Agreement.

2. The tonnage, yardage and dead work rates shall be the existing tonnage, yardage and dead work rates for seven-eighths of the tonnage, yardage and dead work for each day plus rate and one-half for the remaining one-eighth of the tonnage, yardage and dead work.

3. The Inside Day Wage Scale for able-bodied trappers, flaggers and switch-throwers (to answer telephone when required) (based on the seven-hour week day) shall be not less than $6.00.

The Inside Day Wage Scale for able-bodied greasers (based on the seven-hour work day) shall be not less than $6.75.

4. The Outside Day Wage Scale for able-bodied slate-[fol. 178] pickers (based on the seven-hour work day) shall be not less then $6.09.

5. The provisions relating to vacations with pay are hereby amended to substitute, at the appropriate places therein, Fifty ($50.00) Dollars for Twenty ($20.00) Dollars.

In the interest of the National war effort, it is agreed that the vacation period shall be eliminated for the year 1943 without prejudice to or modification of the existing vacation clause of the Agreement. This arrangement shall in no wise affect the payment of Fifty ($50.00) Dollars to be paid by all operators to each individual in conformity with the terms of the Agreement.

The above payment to individual mine workers, entitled to vacation, shall be made at the option of the employing operator, except that in all cases full payment of the amount prescribed shall be made not later than the last pay day occurring in the month of June, 1943.

The vacation payment for the 1944 period shall be made on the last pay day occurring in the month of June of that year.

6. After the effective date of this Supplemental Agreement the operators shall furnish all mine workers' tools at the operators' cost. At the option of each tonnage mine

worker the operator shall purchase and the mine worker shall sell the tools the tonnage mine worker now owns at a price which is equal to one cent per ton for all coal mined by each tonnage mine worker between April 1, 1943, and the effective date of this Supplemental Agreement, with a minimum payment of $3.00.

Safety equipment and devices, including electric cap lamps, and also carbide lamps, shall be furnished by the operators without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes and goggles. In lieu of furnishing carbide lamps and carbide the operator may at his option pay to the mine workers who use carbide lamps at their work 6 cents per day, and the mine workers shall continue to furnish their own carbide lamps and carbide.

No charge shall be made for blacksmithing.

7. In the event of a dispute as to the starting time between any operator and the local union at any mine, either party may make a case of such dispute and thereafter such case shall be handled in accordance with the provisions of the Agreement governing disputes.

8. If the United Mine Workers make a wage agreement during the period of this Supplemental Agreement, covering wages or working conditions with any person, corporation, association, or district, more favorable to the operators than as contained herein, then this Supplemental Agreement shall be modified so that the operators who are parties hereto shall receive all of the benefits of such more favorable agreement.

For the duration of the Supplemental Agreement no strikes shall be either called or maintained hereunder.

[fol. 179] 9. The operators agree that they will not lease any operating mines subject to this Supplemental Agreement as a subterfuge for the purpose of avoiding the provisions of this Supplemental Agreement.

10. It is agreed that the operators who are parties hereto shall be parties to and participate in the conferences to negotiate the basic wage agreement to be effective after March 31, 1945.

11. In full settlement and discharge of and release from claims for all portal-to-portal compensation accruing prior

to April 1, 1945, and in settlement and discharge of the impending litigation by the mine workers against the operators for such portal-to-portal compensation, each mine worker shall be paid in addition to the sums provided for in said Wage Agreement and this Supplemental Agreement, the amount of $1.25 for each day worked, retroactive to April 1, 1943 and hereafter to April 1, 1945; *Provided*, that such retroactive payments shall be made in equal installments during the six months commencing on the first day of the calendar month following the effective date of this Supplemental Agreement, and *Provided*, further, that this paragraph shall be without prejudice to any right of any party signatory to this Supplemental Agreement after April 1, 1945.

12. This Supplemental Agreement, as to general wage rates, may, on thirty (30) days' notice from either party, be reopened for negotiation at the end of the first contract year. The foregoing sentence shall not preclude the parties from mutually agreeing at any time during the term of this Supplemental Agreement, on changes in general wage rates, subject to such approval by the appropriate governmental agencies as may be required by the Act of Congress of October 2, 1942, and the Executive Orders and Regulations issued thereunder. Furthermore, if at any time during the term of this Supplemental Agreement a significant change occurs in government wage policy, either party shall have the right to request negotiations on general wage rates.

13. This Supplemental Agreement is an integrated instrument and its respective provisions are interdependent, and shall be in effect only after the approval hereof by the appropriate governmental agencies and after the granting by the Office of Price Administration of advances in maximum prices sufficient to cover the increased costs occasioned hereby.

Executed in triplicate in the City of Washington, D. C. the 20th day of July, 1943.

Illinois Coal Operators Association By (s) George F. Campbell, President. United Mine Workers of America, International Union, By (s) John L. Lewis, President; (s) John O'Leary, Vice Presi-

dent; (s) Thomas Kennedy, Secretary-Treas. (s) D. W. Buchanan, Hubert E. Howard, George F. Campbell, Sub-Scale Committee. District No. 12, United Mine Workers of America, by (s) Ray Edmundson, President; (s) Hugh White, Vice President; (s) Walter J. James, Secretary-Treasurer; (s) John H. Jones, Charles Brosch, Walter C. Jenkins, Sub-Scale Committee.

[fol. 180] PLAINTIFF'S EXHIBIT No. 39-a

Memorandum

August 31, 1943.

The National War Labor Board has just released its formal order and opinion in the Illinois Coal Operators' case, which involved the portal-to-portal pay clause and other matters. The order and opinion are quoted in full below.

J. D. Battle, Executive-Secretary.

National War Labor Board, Washington

August 24, 1943.

Case No. 13-279. (Request for Approval of an Agreement)

In the Matter of ILLINOIS COAL OPERATORS ASSOCIATION and United Mine Workers of America and District 12, United Mine Workers of America

Order

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Act of Congress of October 2, 1942 and the Executive Orders and Regulations issued thereunder the National War Labor Board hereby rules that:

(1) Sections 1, 2, 7, 8, 9, 10, 12 and 13 of the Supplemental Agreement do not require Board approval.

(2) Sections 3, 4, 5, and 6 of the Supplemental Agreement are approved.

(3) Section 11 of the Supplemental Agreement is disapproved.

William H. Davis, Chairman; George W. Taylor, Vice Chairman; Frank P. Graham, Wayne L. Morse, Horace B. Horton, Cyrus S. Ching, Frederick S. Fales, Walter T. Margetts.

Dissenting on Section 11: Robert J. Watt, Matthew Woll, Van A. Bittner, John Brophy.

[fol. 181] PLAINTIFF'S EXHIBIT No. 39-b

National War Labor Board, Washington

August 24, 1943.

Case No. 13-279

IN THE MATTER OF ILLINOIS COAL OPERATORS ASSOCIATION

and

UNITED MINE WORKERS OF AMERICA AND DISTRICT 12, UNITED MINE WORKERS OF AMERICA

OPINION

This case is brought to the National War Labor Board by a joint request of the Illinois Coal Operators Association and the United Mine Workers of America for approval of a wage agreement entered into by them on July 20, 1943, as a result of collective bargaining.

In acting upon such an agreement the powers and duties of the National War Labor Board are strictly limited. We have authority to pass only upon the wage items of the agreement, and to disapprove them only if they are inconsistent with the national wage stabilization policy. The principles and yardsticks of that policy are set forth in Executive Order #9250 of October 3, 1942, Executive Order #9228 of April 8, 1943 and the Supplemental Policy Directive of May 12, 1943, all issued under the provisions of the Act of Congress of October 2, 1942.

The agreement between the Illinois Coal Operators Association and the United Mine Workers as a supplemental agreement extending and modifying the 1941-1943 wage

agreement. The modifications are expressed in thirteen numbered paragraphs.

The 1941-1943 agreement provides, with certain exceptions not relevant to the present question, that the 7-hour day, 5-day week (35 hours per week) shall prevail in the mines at the usual working places, with an overtime premium at the rate of time and one-half for work beyond seven hours in any one day or 35 hours in any one week. Paragraphs 1 and 2 of the supplemental agreement now before us modify the basic agreement to provide for an 8-hour day, with premium pay for the eighth hour at the rate of time and one-half for day workers and rate and one-half for piece workers. The Board has ruled that this mutually agreed upon extension of the working time, with provision of premium pay in accordance with the 1941-1943 agreement, is not a wabe increase requiring the approval of the National War Labor Board. This ruling follows the precedent established by the Board when on December 5, 1942, in response to an inquiry from the Administrator of the Office of Price Administration, the Board ruled that an agreed modification of the 1941-1943 Appalachian Agreement to provide for the 6-day week with premium pay at the rate of time and one-half rate and one-half for seven hours beyond the prevailing thirty-five hour week was not a wage increase that required the approval of the Board.

[fol. 182] Paragraphs 3, 4, 5, and 6, of the Illinois agreement now before us have to do with (1) payment to able-bodied trappers, flaggers, switch throwers, greasers and slate pickers of the minimum wage established by the 1941-1943 contract for able-bodied employees generally (2) the increase of vacation pay from $20.00 to $50.00 and (3) the furnishing by the operators to the mine workers, without cost, of toools, safety equipment and devices and blacksmithing. These wage adjustments are of the same nature as the wage adjustments allowed in Section A, II; items 4, 5, and 11 (a) and (b) of our Directive Order of June 18, 1943, in the Appalachian case (Case No. 111.1284). These wage adjustments are not inconsistent with the stabilization policy, and the Board has approved them.

Paragraphs 7, 8, 9, 10, 12, and 13 of the supplemental agreement is not relative to wages and do not require approval of the War Labor Board.

Paragraph 11 of the supplemental agreement is presented to the Board as "a settlement, discharge of and release from

all claims for portal-to-portal compensation accruing prior to April 1, 1945," the date of termination of the submitted agreement. The Board has disapproved this part of the agreement on the ground that it does not constitute a genuine settlement of alleged claims arising under the Fair Labor Standards Act.

Paragraph 11 provides for a general wage increase of $1.25 a day to all workers in and about the mines, including those who go underground and those who work outside the mines. This proposed general wage increase requires critical examination on our part under the wage stabilization policy—and if approved by us it would be subject to review by the Economic Stabilization Director—because it is accompanied by a proposed price increase. The supplemental agreement expressly provides that it "shall be in effect only * * * after the granting by the Office of Price Administration of advances in maximum prices sufficient to cover the increased costs occasioned hereby."

The Supplemental Policy Directive of May 12, 1943, modifying Executive Order #9328 of April 8, 1943, provides that "Maladjustments between wages and the cost-of-living will be considered by the Board only for the purpose of correcting substandard conditions of living, or determining adjustments within the 15% limit of the Little Steel formula." This rule has been applied by the Board to deny a general wage increase to many hundreds of thousands of industrial wage earners in all parts of the country. It was applied by the Board to deny a general wage increase to the Appalachian coal miners in our Directive Orders of May 25 and June 18, 1943. It must, of course, also be applied to the Illinois mine workers.

The Illinois mine workers have already had, since January 1, 1941, an increase in their straight-time hourly rates up to the limit of the Little Steel formula. Their hourly rates are too high to permit the suggestion that they need to be increased for the purpose of correcting substandard conditions of living. Therefore, under the national wage stabilization policy the War Labor Board could not approve a further general wage increase for these Illinois mine workers.

[fol. 183] But the mine workers claim that under the Fair Labor Standards Act they are legally entitled to additional compensation for travel time. As we pointed out in our

opinion of May 25, 1943, in the Appalachian case, wage adjustments made in compliance with the Fair Labor Standards Act are not inconsistent with the national wage stabilization policy. The Act of Congress of October 2, 1942, provides that "no action shall be taken under authority of this Act with respect to wages or salaries (1) which is inconsistent with the provisions of the Fair Labor Standards Act * * *" and Executive Order #9250 specifies that "nothing in this Order will be construed as affecting the present operation of the Fair Labor Standards Act. * * *" If, therefore, the wage adjustment proposed in paragraph 11 of the Illinois supplemental agreement were in fact a genuine settlement of the legal claim of the mine workers under the Fair Labor Standards Act we could approve it.

We understand very well what a good thing it would be if we could approve this agreement and put an end to the wage dispute in the bituminous coal industry. We recognize and sympathize with the mine workers' desire to have a grave responsibility to preserve the wage stabilization policy. We are required to do that not only by the Executive Orders under which we operate but also in justice to the multitude of workers who have accepted our decisions denying them general wage increases under that policy. And we owe that obligation also to all of our citizens whose economic status would be undermined by inflationary price increases, including wage earners in the low wage and fixed wage groups, persons dependent upon fixed incomes from investments and the millions of people who have put their savings into life insurance policies.

The only way we can honestly discharge this responsibility, when we are called upon to decide whether the wage increase proposed in the Illinois agreement should or should not be approved, is to satisfy ourselves that the amount of the proposed wage increase is genuinely and reasonably related to the claim advanced by the mine workers under the Fair Labor Standards Act. We pointed that out in our opinion of May 25 and June 18, 1943, and we said that the proposed settlement must be submitted "with supporting data sufficient to enable the Board to determine whether or not it constitutes a genuine settlement of alleged claims arising under the Fair Labor Standards Act, and not an indirect wage increase in violation of the wage stabilization policies."

The proposed settlement is now before us and not supported by any such data and we cannot approve it.

At the hearing before us on August 3, 1943, it was frankly admitted that no additional compensation is due to a mine worker under the Fair Labor Standards Act unless he has spent at his work, including productive time and travel time, more than 40 hours a week* and counsel for both parties admitted that their submission to the Board did not include any data to show whether any mine workers and if so, how many, have worked or now work more than 40 hours a week, counting travel time as working time.

We cannot approve under the Executive Orders by which we are bound, an out-of-court settlement of the legal claims [fol. 184] arising under the Fair Labor Standards Act unless we have before us fair estimate, supported by real data, of the amount of additional money compensation that would be due to the miners under that Act if the courts held that travel time in the bituminous coal mines is working time for which compensation is owed under the Act. That is the practical effort of our decision in the Appalachian case, as pointed out in our opinions of May 25 and June 18, 1943. In no other way can we tell whether the amount of the increase offered as a settlement is genuinely and reasonably related to the claim advanced by the mine workers under the Fair Labor Standards Act.

The proposed settlement now submitted to us is not related at all to the amount of possible recovery under the Fair Labor Standards Act. The figure $1.25 per day is arrived at by processes of rationalization which wholly ignore the fact that the mine workers are not entitled to extra compensation under the Fair Labor Standards Act until the weekly time exceeds 40 hours.

William H. Davis, Chairman.

There was a dissenting opinion signed by Labor Members Van A. Bittner, John Brophy, Carl J. Shipley, and Delmond Garat. Their dissenting opinion follows:

Portal to Portal Pay

We dissent from the majority decision on the ground that

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*Under the Fair Labor Standards Act this time was 44 hours a week from October 1938 to October 1939 and 42 hours a week from October 1939 to October 1940.

the coal miners are entitled to receive payment for their travel time underground. Our reasons are as follows:

(a) The administrative ruling of the applicable provision of the Fair Labor Standards Act, as confirmed by the Circuit Court of Appeals for the Fifth Circuit, is to the effect that travel time underground in mines other than coal mines should be considered as working time for the purposes of the Fair Labor Standards Act. Certainly there is no distinction between coal mining and other mining.

(b) The National War Labor Board has approved the suggest - - - that coal miners receive time and one-half for all work performed in excess of 7 hours in any one day and is specifically approved by the provisions of the Illinois contract which contains such provision. This ruling has been made independent of the provisions of the Fair Labor Standards Act which provides for time and one-half for work performed in excess of 40 hours in any one week. In other words, the National War Labor Board has relied upon the provisions of previous contracts to determine the basis for the payment of overtime.

(c) Since the outstanding collective bargaining contracts in the coal industry provided for time and one-half in excess of 7 hours in any one day, and since travel time underground is working time, we are of the opinion that this Board should direct, and if the parties so agree this Board should approve, the payment to the coal miners for their time spent underground on the basis of premium pay of time and one-half in excess of 7 hours in any one day.

[fol. 185] PLAINTIFF'S EXHIBIT No. 40

Supplemental Agreement Between the Illinois Coal Operators Association, the International Union, United Mine Workers of America, and District No. 12, United Mine Workers of America

It is hereby agreed by and between the Illinois Coal Operators Association, the International Union, United Mine Workers of America and District No. 12, United Mine Workers of America, that the Wage Agreement between the above-named parties, effective to and including

March 31, 1943, as amended and supplemented by the Supplemental Agreement providing for the six-day week, be and it hereby is, extended from April 1, 1943 to and including March 31, 1945, upon the same terms and conditions therein contained, as heretofore so amended and supplemented, except as follows:

1. By reason of the emergency of war and as a contribution to the public welfare it is agreed that for inside employees working on a day wage basis an additional one and one-half hours per day shall be added to the present basic seven-hour work day, making an eight and one-half hour shift at straight time for inside employees, including travel time, and excluding lunch time which shall not exceed thirty minutes, and that for outside employees (including strip mine and coke oven employees) an additional one hour per day work time at time and one-half shall be added to the present basic seven-hour work day, making an eight-hour shift for outside employees, excluding lunch time which shall not exceed thirty minutes, except when breakdown of equipment, accidents, shortage of transportation from the mine, or other causes beyond the control of the operator or operators prevent; *Provided, however,* that lack of market demand shall not permit the operators to operate on less than an eight hour shift for outside employees. Outside employees whose normal work day heretofore has been eight hours shall work eight hours and twenty minutes, for the first eight hours of which they shall be paid time and one-half at their hourly rates based on a seven-hour day.

Any employee in any classification may be required to work under another classification for which he is competent provided that the rate of pay for his regular classification shall not be reduced; and Further Provided, that when he is required to work under a classification for which a rate higher than that of his regular classification is paid he shall be paid at such higher rate for such time.

Work time shall begin at the portal and end at the portal; but in shaft mines, for the purpose of making the operations of lowering and hoisting men orderly and safe, the man trips shall leave the bottom ten minutes after the start of each eight and one-half hour shift and shall arrive at the shaft bottom five minutes before the end of each eight and one-half hour shift (it being understood that

the eight and one-half hours are exclusive of the lunch period.

The established rates of pay for inside men working on a day wage basis shall be continued for the first eight and one-half of each of the first five operating days of each week except where the aggregate of such hours during such first five working days exceeds forty, and then an additional one-half time shall be paid for each hour in [fol. 186] excess of such forty hours; and for all hours worked on the sixth operating day of each week time and one-half shall be paid. This paragraph shall not be construed to require payment of time and one-half on Saturday if the individual mine worker has voluntarily laid off on Monday, Tuesday, Wednesday, Thursday, or Friday of such week.

All employees at mines which produce coal six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual mine workers during the week for the purpose of denying them six days' work is prohibited during the term of this Supplemental Agreement.

Work performed on the seventh consecutive day is optional, but when performed shall be paid for at double rates.

Time and one-half shall be paid for any time worked in excess of the regular shift in any consecutive twenty-four hour period or for work in excess of forty hours in any one week, *Provided*, that this principle shall not be used to pyramid the payment of overtime, and Provided, further, that time and one-half shall not be paid where the regular rotation of shifts requires the working of more than one shift in any consecutive twenty-four hour period.

2. No remuneration other than as provided in this Supplemental Agreement shall be paid to drivers or motormen or trip riders designated by the operator to transport men to and from the mine bottom.

3. The provisions of paragraph numbered 1 hereof shall govern inside employees working at tonnage or piece rates, wherever such provisions are applicable to such workers.

The tonnage, yardage and deadwork rates shall be the existing tonnage, yardage and deadwork rates.

At each mine where men are paid on a tonnage or piece work basis, the operators and miners shall mutually determine the average travel time.

The rate per hour for travel time shall be computed for each individual tonnage or piece worker as follows:

(a) Add the total earnings during the first five days of each week for tons mined, yardage and deadwork.

(b) Divide this sum by a divisor established by subtracting the travel time for the number of days actually worked from eight and one-half times the number of days actually worked. This will establish the rate per hour for travel time.

(c) Multiply this rate per hour by the number of hours (including fractions thereof) that the individual traveled during the five day period, using the average travel time for each day he worked.

(d) The sum of (a) and (c) will constitute the employee's earnings for the week, except for overtime.

[fol. 187] (e) Work in excess of forty hours in the first five days of each week, and travel time for the sixth day, shall be paid for upon the basis of the average hourly earnings established over the five day period at time and one-half.

(f) Rate and one-half for the sixth day of work shall be computed as provided in the Supplemental Agreement providing for the six-day week.

4. The pushing of cars as a regular practice and except in cases of emergency shall be prohibited.

5. The Inside Day Wage Scale for able-bodied trappers, flaggers and switch-throwers (to answer telephone when required) (based on the eight and one-half hour work day) shall be not less than $7.29.

The inside Day Wage Scale for able-bodied greasers (based on the eight and one-half hour work day) shall be not less than $8.20.

6. The Outside Day Wage Scale for able-bodied slate pickers (based on the eight-hour work day) shall be not less than $7.29.

7. The provisions relating to vacations with pay are hereby amended to substitute, at the appropriate places therein, Fifty ($50.00) Dollars for Twenty ($20.00) Dollars.

In the interest of the National war effort, it is agreed that the vacation period shall be eliminated for the year 1943 without prejudice to or modification of the existing vacation clause of the Agreement. This arrangement shall in no wise affect the payment of Fifty ($50.00) Dollars to be paid by all operators to each individual in conformity with the terms of the Agreement.

The above payment to individual mine workers, entitled to vacation, shall be made at the option of the employing operator, except that in all cases full payment of the amount prescribed shall be made not later than the last pay day occurring in the month of June, 1943.

The vacation payment for the 1944 period shall be made on the last pay day occurring in the month of June of that year.

8. After the effective date of this Supplemental Agreement the operators shall furnish all mine workers' tools at the operators cost. At the option of each tonnage mine worker the operator shall purchase and the mine worker shall sell the tools the tonnage mine worker now owns at a price which is equal to one cent per ton for all coal mined by each tonnage mine worker between April 1, 1943 and the effective date of this Supplemental Agreement, with a minimum payment of $3.00.

Safety equipment and devices, including electric cap lamps, and also carbide lamps, shall be furnished by the operators without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes and goggles. In lieu if furnishing carbide lamps and carbide the operator may at his option pay to the mine workers who use carbide lamps at their work 6 cents per day, and the mine workers shall continue to furnish their own carbide lamps and carbide.

[fol. 188] No charge shall be made for blacksmithing.

9. In the event of a dispute as to the starting time between any operator and the local union at any mine, either party may make a case on such dispute and therefore such case shall be handled in accordance with the provisions of the Agreement governing disputes.

10. If the United Mine Workers make a wage agreement during the period of this Supplemental Agreement, covering wages or working conditions with any person, corporation, association or district, more favorable to the operators than as contained herein, then this Supplemental Agreement shall be modified so that the operators who are parties hereto shall receive all of the benefits of such more favorable agreement.

For the duration of this Supplemental Agreement no strikes shall be either called or maintained hereunder.

11. The operators agree that they will not lease any operating mines subject to this Supplemental Agreement as a subterfuge for the purpose of avoiding the provisions of this Supplemental Agreement.

12. It is agreed that the operators who are parties hereto shall be parties to and participate in the conferences to negotiate the basic wage agreement to be effective after March 31, 1945.

13. There shall be paid to each employee on the pay roll of the employer from April 1, 1943 to June 20, 1943, as his distributive share of and in full of, and all amounts due for portal to portal since April 1, 1943, the sum of Forty ($40.00) Dollars payable in equal installments during the four months commencing on the first day of the calendar month following the effective date of this Supplemental Agreement. Any employee on the pay roll during said period for a time less than the full said period shall be paid a corresponding pro rata share of such Forty ($40.00) Dollars.

14. The payments herein provided for shall be construed to be in full settlement and discharge of all portal to portal compensation accruing prior to April 1, 1945, and in settlement and discharge of all pending litigation by the mine workers against the operators and by the operators against the mine workers signatory hereto for such portal to portal compensation. In consideration of such acceptance and discharge the operators and mine workers signatory hereto agree that all actions at law and suits in equity hereto instituted by them involving the question of portal to portal compensation shall be dismissed. This paragraph shall be without prejudice to any right of any party signatory to this Supplemental Agreement arising after April 1, 1945.

15. This Supplemental Agreement, as to general wage rates, may, on thirty (30) days' notice from either party, be reopened for negotiation at the end of the first contract year. The foregoing sentence shall not preclude the parties from mutually agreeing at any time during the term of this Supplemental Agreement, on changes in general wage rates, subject to such approval by the appropriate governmental agencies as may be required by the Act of Congress of October 2, 1942, and the Executive Orders and [fol. 189] Regulations issued thereunder. Furthermore, if at any time during the term of this Supplemental Agreement a significant change occurs in the government wage policy, either party shall have the right to request negotiations on general wage rates.

16. This Supplemental Agreement is an integrated instrument and its respective provisions are interdependent, and shall be in effect only after the approval hereof by the appropriate governmental agencies and after the granting by the Office of Price Administration of advances in maximum prices sufficient to cover the increased costs occasioned hereby.

Executed in triplicate in the City of Washington, D. C. the Twenty-third day of September, 1943.

Illinois Coal Operators Association, By (S.) George F. Campbell, President, Fred S. Wilkey, Secretary, D. W. Buchanan, Hubert E. Howard, William P. Young, D. H. Deavonald, H. A. Treadwell, Sub-Scale Committee. District No. 12, United Mine Workers of America, By (S.) Ray Edmundson, President, Hugh White, Vice President, Walter J. James, Secretary-Treasurer, Walter C. Jenkins, John H. Jones, Charles Brosch, Sub-Scale Committee. United Mine Workers of America, International Union, By (S.) John L. Lewis, President, John O'Leary, Vice President, Thomas Kennedy, Secretary-Treasurer.

[fol. 190] PLAINTIFF'S EXHIBIT No. 40-a

National War Labor Board

October 26, 1943.

Case No. 13-279 (Request for Approval of an Agreement)

In the Matter of ILLINOIS COAL OPERATORS ASSOCIATION and United Mine Workers of America and District 12, United Mine Workers of America

DECISION

The Illinois Agreement now submitted to the Board presents for the first time a true portal-to-portal method of compensation for the mine workers. The 1941-1943 contract provides for a 7 hour day and 35 hour week of productive time at the working face, *excluding* travel time. The Board has already approved its extension to an eight hour day and 48 hour week with time and one-half for all productive time by 7 hours a day or 35 hours a week. The Illinois Agreement proposes to substitute for this method a compensation an 8½ hour day *inclusive* of travel time, with payment at straight time rates for the 8½ hours and overtime payment at rate and one-half for all time beyond 40 hours a week.

As we said in our opinion of August 24 on the previously submitted Illinois Agreement "In acting upon such an agreement the powers and duties of the National War Labor Board are strictly limited. We have authority to pass only upon the wage items of the agreement, and to disapprove them only if they are inconsistent with the national wage stabilization policy. The principles and yardsticks of that policy are set forth in Executive Order #9250 of October 3, 1942, Executive Order #9528 of April 8, 1943 and the Supplemental Policy Directive of May 12, 1943, all issued under the provisions of the Act of Congress of October 2, 1942."

The Board can therefore approve the basic principle of the Illinois Agreement now presented to it, that is, the principle of establishing a method of payment on an 8½ hour day including travel time, in place of the old 7 hour day excluding travel time. But the Act of Congress and the Executive Orders and Directive issued thereunder require that the Board should pass upon the *amount* of compensation

under the new plan to determine whether it includes a wage increase beyond the limits of the wage stabilization policy.

The studies of the Bureau of Labor Statistics for the years 1931, 1933 and 1936 indicate that the average travel time in the Illinois underground mines is between 0.7 and 0.8 of an hour, although both the mine workers and the operators have stated (without, however, submitting any supporting data) that the average travel time exceeds this amount. To make possible an immediate contract, the Board is willing to assume that in the Illinois underground mines covered by the proposed agreement the average travel time is 0.75 hours or 45 minutes per day. We are willing to do this even though the present travel time may somewhat exceed this amount because we are convinced that when travel time is paid for the economic inducement imposed on the operators will lead them to reduce the travel time, and because the mine workers have, in their submis- [fol. 191] sion of the proposed Illinois Agreement, expressed their willingness to have the operators reduce the travel time as much as they can if adequate facilities are provided in connection with any newly opened portals.

On this assumption of 45 minutes average travel time per day the productive time in the 8½ hour day would amount to 7 and three-fourths hours. Under the old contract the compensation for this amount of productive time would be 8.125 times the hourly rate (straight time for 7 hours and time and one-half for 45 minutes). On the base rate of $1.00 an hour this would amount to $8.12½. The new Illinois Agreement proposes to pay for the 8½ hours, including travel time, a base rate of $8.50. This is a daily wage increase of 37½ cents and is therefore 37½ cents a day more than the Board is able to approve under the limitations of the Act of Congress and the Executive Orders and Directive issued pursuant thereto.

The Board could approve a daily wage of $8.12½ but not more.

When we turn to the overtime provisions of the proposed Illinois Agreement, we find that they follow the statutory provisions of the Fair Labor Standards Act. For mine workers who work more than 40 hours a week this involves a wage increase of half time for 2½ hours of the fifth day of work, but under any true portal-to-portal system in which travel time is included in working time this result follows

as a matter of law from the Fair Labor Standards Act. It is, in the present case, the amount that the operators have to pay to relieve themselves of any further liability under the Fair Labor Standards Act. We have already held that payments made to satisfy the requirements of that Act, if they are truly related to those requirements, may be approved. The provision of the proposed Illinois Agreement as to overtime are exactly fitted to the Fair Labor Standards Act and we can therefore approve them.

For outside employees (including strip mine and coke oven employees) the proposed Illinois Agreement provides for an 8 hour day with time and one-half for the eight hours. This follows the 8 hour day provision that has already been approved in connection with the old contract. For outside employees such as maintenance employees whose normal work day heretofore has been 8 hours the Illinois Agreement provides for a work day of 8 hours and 20 minutes at straight time for the first 8 hours, and time and one-half for the last 20 minutes. This is a reasonable adjustment to maintain relative relationships among the different classes of employees, and it can be approved.

The total effect of what we can approve amounts to a very substantial increase of the mine workers' weekly wage so long as the miners work more than 40 hours a week. Figured on the basic hourly rate of $1.00, the total weekly earnings of the mine workers under the Illinois Agreement modified to reduce the basic daily wage from $8.50 to $8.12½ would be increased over the 1941-1943 Agreement by approximately $10.00 per week from about $45.50 to about $55.50 per week. The total weekly hours for a six day week including travel time would be 51 hours (46½ hours productive time and 4½ hours travel time) compared with 42 hours productive time under the 1941-1943 Agreement. The wage increase of approximately 25 cents a day [fol. 192] as resulted from the wage adjustment heretofore approved by the War Labor Board for the bituminous coal miners is included in these figures. The actual average earnings are about 8 to 10 per cent above these earnings figured on the basic rate because most miners get a higher hourly rate than the base rate. For a miner who worked six days a week the average weekly earning would be approximately $60.00.

The beneficial effects of such a contract would be to make available to the mine workers a considerable amount of

overtime thereby making fuller use of the limited available manpower, increasing the weekly earnings of the miners, increasing the production of bituminous coal which the country so badly needs, and disposing of the portal-to-portal controversy. This would be accomplished by applying to the mine workers' wages the same yardsticks that have been used in measuring wage adjustments for all other wage earners without discriminatory advantage or disadvantage, and without unstabilizing general wage levels.

All the other provisions of the proposed Illinois Agreement relating to wages merely embody wage adjustments which the Board has already approved except the provision of paragraph thirteen that the sum of forty dollars will be paid to each mine worker on the payroll from April 1, 1943 to June 20, 1943 as a retroactive adjustment and in full settlement and discharge of all accrued portal-to-portal compensation. We think this amount represents a reasonable settlement and we can approve it.

The other provisions of the proposed Agreement, which do not involve wage adjustments, do not require our approval.

Furthermore, if and when the operators and the mine workers do, in cooperation succeed in reducing the average travel time for all the mines covered by the Agreement below 45 minutes a day, and simultaneously increasing the productive working time at the face, a contract could be approved allowing the miners a further increase in their daily wage. If the average travel time can thus be reduced to 30 minutes a day, the mine workers could be paid the full amount of the proposed Illinois Agreement. If the Illinois Agreement is modified as above indicated it will be approved by the War Labor Board.

Representing the Public: (S.) William H. Davis, George W. Taylor, Wayne L. Morse, Frank P. Graham. Representing Industry: (S.) George H. Mead, George K. Batt, Horace B. Horton.

Dissenting:

Representing Industry: (S.) Almon E. Roth. Representing Labor: (S.) George Meany, Robert J. Watt, Van A. Bittner, John Brophy.

[fol. 193] Advance Release Advance Release

Office of War Information, National War Labor Board

B-1069

For Release in A. M. Papers of Friday, October 29, 1943.

A dissenting opinion in the Illinois Coal case, signed by the American Federation of Labor members of the National War Labor Board, was made public today.

The opinion is attached.

[fol. 194] National War Labor Board

Case No. 13-279

In the Matter of Illinois Coal Operators Association and United Mine Workers of America and District 2, United Mine Workers of America

October 28, 1943.

(Request for Approval of an Agreement)

Dissenting Opinion of Labor Members

The Labor Members dissent from the position taken by the majority, because they believe there is one basic principle about which there can be no compromise: the workers should be paid for the work they do. The opinion of the majority on the portal-to-portal issue is a compromise of this principle.

The Labor Members see no reason for the mental, legal and arithmetical gymnastics indulged in by both divisions of the majority. Starting from the same premise that travel time is *work* time, and, therefore, compensable, the Labor Members accept the "test" proposed by the majority:

> "Does the proposed wage result in the workers' receiving more money for the same amount of work?"

The answer to this question is definitely "no" if the Illinois Agreement were approved in full. The logic of the Illinois Agreement is clear. All travel time is work time. All work time is "productive" time. The miners are to work 8½ hours per day. Within the first 40 hours of the

week each hour worked is to be paid for at the base rate of $1.00 per hour. Each hour worked in excess of 40 hours is to be paid for at one and one-half the base rate. For the 51 hour work-week they are entitled to receive $56.50.

The facts in this case related to the portal-to-portal issue are clear. Guided by a previous decision of the Board, the two parties in this case—The Illinois Coal Operators Association and the United Mine Workers of America—successfully bargained collectively and arrived at an agreement which included a genuine portal-to-portal method of compensation for the mine workers.

In this Agreement, the parties have jointly proposed that the historical work day of 7 hours be lengthened to 8½ hours, and that the former 35 hours be increased to a 51 hour week. The new work day was to include travel time. Finally, it was agreed that overtime was to be paid for all hours in excess of 40 hours per week at the rate of time and one-half.

In terms of dollars and cents, the Agreement meant that instead of earning $1.00 per hour for 7 hours per day, the miners would now earn $8.50 for an 8½ hour day at [fol. 195] straight time. The increase in daily earnings would be commensurate with an increase of 1½ hours more work per day.

A majority of the Board has seen fit to deny this wage adjustment, not because they do not believe the method of determining portal-to-portal pay is not genuine; not because they do not believe that travel time is not work time; but they have rejected this Agreement because they do believe that travel time should not be paid in full.

There is apparent unanimity among the majority that travel time is work time. Specifically, the statement is made that the Board recognizes that the *method* of determining portal-to-portal compensation is genuine and that the Board has, therefore, only to pass upon the *amount* of compensation to be paid. Precisely how the amount is determined is a point of difference between not only the majority and the minority of the Board in this case, but also between the members of the majority.

In the majority decision, as described by Chairman Davis, the determination of the daily pay for 8½ hours at straight time raises the question of how much per day is paid for the three-fourths of an hour of travel time. If the former basic hourly rate of $1.00 per hour is continued in this contract,

then travel time within the statutory 40 hour week is paid for at half time. (7-three-fourth's time at $1.00 per hour and three-fourths of an hour at half time). If the three-fourth's of an hour daily travel time is paid for at a full straight time rate, then the miners have had their basic hourly rate reduced from $1.00 per hour to approximately 95½ cents per hour.

In a special concurring opinion some members of the majority are more specific in their answer to the question of how much pay is granted for travel time within the 40 hour straight time period. The position taken by these members of the majority is that no pay is to be granted for the travel time which occurs within the first 40 hours worked. Travel time will be paid for only after 40 hours have been worked, and then at the time and one-half rate.

In both the majority opinion and in the special concurring opinion there is unanimity on the point that travel time is work time. There is, however, a difference in the explanations of just when travel time is paid. In the majority opinion, there is no forthright explanation of when travel time is paid for; the bald statement is made that $8.12½ is to be paid for 8½ hours at straight time per day for hours worked within the 40 hour period. All hours in excess of 40 are compensated for at a time and one-half period. All hours in excess of 40 are compensated for at a time and one-half rate. Precisely how travel time is paid for is left to the reader's mathematical approach.

In the special concurring opinion, by way of contrast, travel time is definitely not paid for if it is worked during the first 40 hours of the week.

It is our considered judgment that the miners should receive $8.50 for each straight time 8½ hour day worked. [fol. 196] For the work-week of 40 hours at straight time and 11 hours at time and one-half the total take-home should be $56.50.

Neither of the two divisions of the majority group are willing to concede that in dollars and cents travel time is genuinely work or productive time. By limiting the amount of the daily earnings to a total of $8.12½ for hours worked within the 40 hour period, the majority opinion essentially limits travel time to half time pay. The special concurring opinion does not pay for this productive time at all until

after 40 hours have been worked on the legal ground that the Fair Labor Standards Act does not require it. Then time and one-half pay is paid for travel time.

The inability of both divisions of the majority to conceile that travel time is productive time that should be paid for in full whenever it is worked contravenes the basic principle that pay is due for *all* time worked. The Labor Members are forced to dissent also because the rights of the workers to full pay cannot be explained away by half-time pay or the limitations of legal requirements.

This decision of the majority adds another to the list of decisions of this Board which have been determined not on the basis of merit, but rather by the attitude of the individuals and government agencies who dominate the actions of the public members of the Board.

George Meany, Mathew Woll, Robert J. Watt, Martin P. Durkin.

[fol. 197] PLAINTIFF'S EXHIBIT No. 41

Memorandum of Agreement

On November 1, 1943, the Secretary of the Interior, pursuant to the direction of the President, took possession of the coal mines at which a strike or stoppage had occurred or was threatened. The order of the President authorized and directed the Secretary to offer to the mine workers a contract governing the terms and conditions of employment for the period of the National War Labor Board, in the matter of Illinois Coal Operators Association and United Mine Workers of America of October 26, 1943, and with such further directives as may be given by the War Labor Board. It further required the Secretary to submit the contract to the Board for its approval.

The mining of coal for war must be resumed immediately. In order to accomplish this, the parties have reached a tentative agreement in accordance with the opinion of the War Labor Board. This agreement provides for the relinquishment of the mine workers of 15 minutes out of the customary 30-minutes lunch period. The utilization of this 15-minute period for productive work will yield an estimated additional annual tonnage of coal in excess of 20,000,000 tons of bituminous and 2,000,000 tons of anthracite.

The following agreement is therefore made:

A. In respect to bituminous mines:

1. All of the provisions of the Illinois contract which were not disapproved by the War Labor Board in its decision of October 26, 1943, shall become effective at the time stated in this agreement, provided, however, that the provisions of Paragraph 13 of the Illinois contract shall not be applicable to the Government.

2. In applying the opinion of the War Labor Board to the areas other than the Illinois area, the parties have assumed an average travel time throughout the areas of 45 minutes per day in accordance with the assumption by the War Labor Board in the Illinois case. This assumption is made solely for the purposes of this agreement and is limited thereto.

3. The prevailing customary 30-minute lunch period is hereby reduced to 15 minutes and the mine workers agree to work said additional 15 minutes as productive time and shall be paid therefor on the basis of time and one-half or rate and one-half, as the case may be, and be made applicable to all existing rates effective in all bituminous coal districts. Using the Illinois basic rates purely for illustration, this is intended to provide a basic daily wage in that area of $8.50 a day.

B. In respect to anthracite mines:

1. All of the provisions of the agreement approved by the War Labor Board in its directive order of October 28, 1943, in the Matter of the Anthracite Operators and the [fol. 198] United Mine Workers of America District Nos. 1-7 and 9 *and* hereby made a part of this agreement.

2. The prevailing customary 30-minute lunch period is hereby reduced to 15 minutes and the mine workers agree to work said additional 15 minutes as productive time and shall be paid therefor, on the basis of time and one-half for each day worked. This is intended to provide, in addition to the increase approved in the War Labor Board order of October 28, an increase of 37.8 cents per day for all day and monthly men. All contract miners, consideration miners and contract mine laborers will receive an increase of 37.8 cents per start. The proportion of the proper share of the

increase for this 15-minute additional productive work in respect to contract mine laborers is to be paid by the operator in accordance with established custom and practice.

C. In respect to both bituminous and anthracite mines:

1. This agreement is to cover all of the possessed coal mines which had contracts with the United Mine Workers of America for a period ending during the year 1943.

2. It is expressly affirmed that both parties will take all appropriate steps to assure maximum safety in working conditions and will cooperate to that end.

3. This agreement shall promptly be submitted, in accordance with the direction of the President, to the National War Labor Board for its approval. Subject to that approval, this agreement becomes effective today.

(Signed) Harold L. Ickes, Secretary of the Interior;
(Signed) John L. Lewis, President United Mine Workers of America.

November 3, 1943, Washington, D. C.

[fol. 199] PLAINTIFF'S EXHIBIT No. 41-a

November 5, 1943.

In the Matter of Memorandum of Agreement Between the Secretary of the Interior and the United Mine Workers of America

Resolution

The National War Labor Board, acting on the authority vested in it by Executive Order No. 9017 of January 12, 1942; the Executive Orders, Directives and Regulations issued under the Act of Congress of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, hereby resolves as follows:

(1) That the Memorandum of Agreement reached by the Secretary of the Interior and the United Mine Workers governing the terms and conditions of employment for the period of the operation of the coal mines by the Government is hereby approved, subject to clarification and resubmission as to (a) the provisions for payment of ton-

nage or piece workers and (b) the application of the provisions as to the pushing of cars in places where it is impracticable to deliver the cars to the working place other than by pushing.

(2) That the President of the United States be notified of this approval in accordance with the provisions of Section 5 of the War Labor Disputes Act.

(3) That the fact of such approval and notification be transmitted to the Secretary of the Interior with the covering letter which has been prepared by the Chairman and submitted to the Board and is attached hereto.

Representing the Public: William H. Davis, Chairman; George W. Taylor, Frank P. Graham.

Representing Labor: George Meany, Robert J. Watt, Van A. Bittner, Carl Shipley.

Representing Industry: George Mead, Reuben B. Robertson, James Tanham, Walter Margetts.

Dissenting: Wayne L. Morse.

[fol. 200] PLAINTIFF'S EXHIBIT No. 41-b

National War Labor Board

November 5, 1943.

In the Matter of:

Proposed Memorandum of Agreement Governing Wages in Coal Mines During Period of Government Operation

Dissenting Opinion

The Memorandum of Agreement submitted by the Secretary of the Interior to the War Labor Board for its approval in this case is the end result of four costly strikes by the United Mine Workers of America in violation of the no-strike pledge. It is the product of coercive action resulting from the exercise of economic power against the Government and the people of the Nation. The language of the Agreement contains its own admission of this fact when it states, "The mining of coal for war must be resumed immediately. In order to accomplish this, the parties have reached a tentative agreement in accordance with the Opinion of the War Labor Board." It is contrary to sound

public policy for the War Labor Board to approve this agreement which was negotiated under the duress of a strike.

The War Labor Board has consistently ruled, up to now, that it will not consider the merits of a controversy between an employer and a union while a strike is in progress. This Memorandum of Agreement was not only negotiated in the midst of strike action, but the War Labor Board has reached a decision on it while many thousands of miners are still engaged in a work shortage. The Nation should have exercised its sovereign power to meet the challenge raised by the economic action of the United Mine Workers of America, rather than capitulate to that challenge by offering them a contract which appears to have been dictated at the point of the strike weapon.

There is not any language in the President's Executive Order of November 1, 1943, which supports the position of those who argue that the Secretary of the Interior was authorized to offer the mine workers a contract while they were still out on strike. To the contrary, the Order when read in its entirety and in connection with the President's statement issued at the time the Order was released, leaves no room for doubt about the fact that he ordered the mines seized under the War Labor Disputes Act. Furt-er, he stated, "The mines will be opened by the Government on Wednesday morning. Every miner will be expected to be at his post of duty, ready to work for his Government." The return of the men to work should have been a condition precedent to any offer of a contract by the Secretary of Interior or any consideration of such a contract by the War Labor Board if the purpose and intent of the statements of the President and the provisions of his Executive Order were to be observed.

The most serious consequence to the stability of wartime labor relations may be expected to flow from this abrogation of the previous policy of the Government by those actions of the Secretary of Interior and of the War Labor Board in this case. The example set is bound to influence [fol. 201] the conduct of other irresponsible labor leaders and undermine the disciplinary control of patriotic and responsible labor leaders who believe that their members should live up to the no-strike pledge. Already, the War Labor Board has been notified by one of its regional boards

that two serious strikes in vital war plants have been called by union leaders who are insisting that the striking men will not return to work until the Government, through the War Labor Board, approves a settlement in the same manner as that in which the Government capitulated to the demands of the United Mine Workers of America.

The contract for the Illinois coal area previously passed upon by the Board differs in its inherent nature from the contract proposed in the instant case. Sight must not be lost of the fact that the proposed Illinois contract was the outgrowth of collective bargaining between the Mine Workers and the mine owners. It set forth terms mutually satisfactory to the workers and owners of the mines. The contract proposed in the instant case is not a collective-bargaining contract. Its legal status is an anomaly. However, it does purport to set forth the terms of a wage agreement which is to prevail in all of the areas. It is to be applied to the private property of citizens who were not parties to the contract. It is true that the contract supposedly is to govern for only the period of time during which the mines are operated by the Government, but it is a virtual certainty that the mine owners will have to accept a contract embodying the same conditions when their mines are returned to them or be faced with strike action. The mine owners best of all know this to be a fact. They had no voice in determining the terms of the contract, yet their property interests are vitally affected thereby. Private property interests throughout the country have the right to be concerned and alarmed over such a procedure.

The proposed contract cannot be reconciled with the Illinois contracts because it rests upon the unproved assumption that the average travel time in the mines outside of Illinois is 45 minutes. Records made at hearings before the War Labor Board since the coal controversy first started show that the mine owners in the Appalachian fields and in Alabama contest that assumption. The Appalachian operators claim that the average travel time is approximately 82 minutes. It is interesting to note at this point that spokesmen for the United Mine Workers of America, including its International President, claimed some weeks ago that 90 minutes was the average time in the Appalachian fields.

The War Labor Board has no right to assume that 45 minutes is the average time as long as the owners outside

of the Illinois area are in such complete disagreement with the assumption.

The Board's assumption is bound to work a great hardship upon the owners of those mines in the Appalachian and Alabama fields in which the travel time is much in excess of 45 minutes. It is one thing in the Illinois case to make the 45-minute travel-time assumption because it was agreeable to the owners and the union, but it is not fair or equitable to make it applicable to mine owners in other fields who have [fol. 202] insisted that any such assumption would be contrary to fact and, therefore, would work great financial hardship upon them. It is well recognized that the percentage of mines in the Appalachian fields with a travel time well over one hour is greater than in the Illinois area. At the hearing on the Illinois contract, the Appalachian owners contended that unless the Government supplied them with a supporting price to meet the added cost, the 45-minute travel-time assumption would make it impossible for them to operate even under the favorable market conditions of wartime and would most certainly put them out of business in peacetime. Property interests and rights of citizens should not be adjudicated by a Government upon the basis of unproved promises and assumptions and without affording all those affected an opportunity to participate in the negotiations of any settlement such as this one.

The proposal to decrease the 30-minute lunch period to 15 minutes in order to satisfy on paper Mr. Lewis' demand for an $8.50-per-day wage as a condition for mining coal cannot be challenged from a mathematical standpoint. However, it is very doubtful that any such increase of productive time at the expense of the lunch-rest period will be a causative factor in producing more coal. The arduousness of the work of miners would seem to justify providing them with the necessary rest incident to a 30-minute lunch period. Practically all studies on industrial fatigue reach the conclusion that workers engaged in such heavy work as that of mining can produce just so much in a given day and when the hours are increased beyond the point of maximum efficiency or reasonable rest periods are denied the workers' production usually falls off.

Over the years, the officials of the United Mine Workers of America have argued and demonstrated convincingly that long hours at the working places in the mines result in less coal production than a day of shorter hours with a 30-

minute lunch period. The Government should not be a party to reducing the miners' lunch period in order to justify yielding to the demand in an increase in earnings. If it was necessary, to meet Mr. Lewis' $8.50-per-day wage demand in order to get coal mined, then it would have been fairer and more forthright to make an exception to the wage stabilization program to the extent of paying the miners the sum demanded and let them keep their 30-minute lunch period.

By way of summary, this dissent rests upon the following findings:

First. The contract is the product of the use of economic action against the Government and the Nation, and, therefore, should be disapproved as being against sound public policy.

Second. It violates the heretofore policy of the Government that wartime labor disputes will not be adjudicated and determined by the Government during a strike, but that strike-s should first be required to return to work.

Third. The procedure followed in negotiating this contract and submitting it to the War Labor Board for approval, and the approving of the contract by the Board, subject to certain minor corrections, is not in accordance [fol. 203] with a fair and reasonable interpretation of the President's Executive Order of November 1 and his statement to the public released therewith.

Fourth. The example set by the procedure adopted in this case is likely to cause serious interruption of production in any other industry in which there may be irresponsible union officials who are not loyal to their no-strike pledge.

Fifth. The contract jeopardizes private property interests because in all probability the owners of the mines will have to accept its terms, if and when their mines are returned to them, or be faced with strike action. The record indicates that many of them cannot operate their mines without a substantial Government subsidy because travel time in their mines is far in excess of the assumed 45-minutes.

Sixth. The contract proposes to reduce the lunch period of 30-minutes to 15-minutes as a device for increasing the productive time of the miners, thereby providing on paper the additional amount of earnings necessary to meet the

$8.50-per-day wage demand. It is very doubtful that taking a needed rest period away from the miners will in and of itself produce more coal or promote their efficiency and well being.

Seventh. Lastly, The negotiating and submitting of the contract to the War Labor Board and its approval thereof in light of all the surrounding facts and circumstances place a great strain on the ordinary conception of Government by law.

The majority of the Board have spoken. This writer highly respects their views, but for the foregoing reasons he dissents from their decision.

Opinion by: Wayne L. Morse.

[fol. 204] PLAINTIFF'S EXHIBIT No. 42

National War Labor Board
Washington, D. C.

November 5, 1943.

Honorable Harold L. Ickes, Secretary of the Interior,
Washington, D. C.

MY DEAR MR. SECRETARY:

This will acknowledge yours of November 3 applying to the National War Labor Board, in accordance with Executive Order 9393 and pursuant to Section 5 of the War Labor Disputes Act, for approval of the memorandum of agreement governing the terms and conditions of employment for the period of the operations of the coal mines by the government.

I am today transmitting to the President, in accordance with the provisions of Section 5 of the War Labor Disputes Act, the War Labor Board's approval of the memorandum of agreement in principle, but subject to clarification and resubmission as to (1) the provisions for payment of tonnage or piece workers, and (2) the application of the provision as to the pushing of cars in places where it is impracticable to deliver the cars to the working place otherwise than by pushing. Any approval of this agreement for the period of the operation of the coal mines by

the government is, of course, subject to the provisions of Section 5 of the War Labor Disputes Act as to subsequent modification.

The Board has approved the principles of the submitted agreement as applied to employees working on a day wage basis because of the fact that it provides no more pay for the work performed in a forty hour week than would be due to the miners for that same work under the 1941-1943 agreement. The submitted agreement provides on the average for eight full hours of productive work in each eight and one-half hour working day with daily compensation to the workers up to forty hours a week in the same amount they would be compensated under the 1941-1943 agreement, with compensation at one and one-half times the hourly rate for all hours over forty including travel time, in accordance with the applicable provisions of the Fair Labor Standards Act.

The provisions as to tonnage workers do not clearly reflect this same principle. To make the same principle effective the travel time rate for tonnage workers should apparently be but two-thirds of that specified in the Illinois Agreement.

Paragraph 4 of the Illinois Agreement provides that "The pushing of cars as a regular practice and except in cases of emergency shall be prohibited." This was agreed to for the Illinois area by the Illinois operators and mine workers. Your attention is called, however, to the fact that in the Directive Orders of the Board of May 25, 1943 and June 18, 1943 in the dispute between the Appalachian Operators and the United Mine Workers the Board, in connection [fol. 205] with this matter of "Spotting of cars" found that there are cases in which it is not possible to deliver the mine cars to the working places other than by pushing. The Board ruled that the cars should be so delivered "so far as practicable" and required the parties to refer the question of pushing the cars to district conferences. It should, therefore, be understood and agreed that, outside of the Illinois area, paragraph 4 of the Illinois Agreement, during the period of government operation, will be subject to the Directive Orders of the Board of May 25, 1943 and June 18, 1943 so that the delivery of cars to the working places by pushing will be the subject of local negotiations and will not be prohibited where it is impracticable otherwise to deliver them to the working places.

It seems to the Board that paragraphs 12 and 15 and part of 14 of the Illinois Agreement are not applicable to government operation and should be excluded.

This is obviously true of paragraph 12 which deals only with the matter of what operators shall be parties to the future negotiation of a basic wage agreement between mine workers and operators to be effective after March 31, 1945.

As to paragraph 14, the Board thinks that all of it should be omitted except the following words:

"14. The payments herein provided for shall be construed to be in full settlement and discharge of all portal to portal compensation."

The remainder of the paragraph has to do with the settlement of pending claims and lawsuits between the mine workers and the operators and seems to be no proper part of the agreement with the government.

We think paragraph 15 of the Illinois Agreement should be excluded for the reason that it was intended to fix the term or duration of the agreement between the mine workers and the operators, whereas the duration of the agreement you submit to us is "for the period of the operation of the coal mines by the government."

In connection with your use of 45 minutes as an average of travel time in the agreement covering all the mines during the period of government operation, I am requested by the Board to call your attention to the fact that the Board's approval of this average for the Illinois Agreement, even though travel time may somewhat exceed that amount, was based upon two important considerations; (1) that the economic inducement imposed on the operators would lead them to reduce the travel time; and (2) that the mine workers in their submission of the proposed Illinois Agreement expressed to the Board their willingness to cooperate in reducing the travel time as much as possible, if adequate facilities were provided in connection with any newly opened portals. In approving this average for all the mines during the period of government operation the Board assumes that this reduction of travel time will in no way be impeded, and hopes that it will be in every way accentuated. [fol. 206] The Board is very definitely of the opinion in the approval of any agreement that may be made between the operators and the Mine Workers of the Board should have more exact information as to the actual travel time,

and also a concrete estimate of the possibilities of reducing travel time in the several contract areas and it certainly would be desirable to have that information broken down for the mining districts and for the price areas. The existing possibility of reducing the amount of travel time can justify an assumption of average travel time somewhat greater than the actual amount of travel time. With the more exact information the parties and the Board would be in a position to determine whether the assumed average is reasonably within the principle of the Board's decision, i. e. that the wages paid for the first forty hours of the week should not exceed the wages that would be paid under the 1941-1943 agreement.

If you feel that the prompt resubmission of the agreement would be facilitated by a personal conference between us, please let me know.

Sincerely yours, (S.) William H. Davis, Chairman.

[fol. 207] PLAINTIFF'S EXHIBIT No. 43

Copy of memorandum from K. C. Adams, U. M. W. A., to J. D. Battle, dated November 9, 1943. Mr. Adams says this is their interpretation.

Each and every coal company which had an agreement with the U. M. W. A. in the period 1941-1943 and worked under the continuing terms of this contract, as amended by the W. L. B., up to October 31, 1943, is liable for the $40 back "portal-to-portal" payment, payable in four equal installments following the first day of the calendar month following the effective date of the U. S.-U. M. W. A. agreement.

The U. S.-U. M. W. A. agreement became effective November 3, 1943. This agreement continues in effect the basic agreement of 1941-1943, the supplemental six-day agreement, the directives of the W. L. B. affecting free tools, blacksmithing and cap lamps, the increased vacation pay from $20 to $50, and all of the terms and conditions of the Ill.-U. M. W. A. supplemental agreement, which are made applicable to all bituminous coal areas before mentioned as having contract relationship with the U. M. W. A., with the exception of:

(1) Car Pushing—which is referred to local settlement

(2) Application of Computing Tonnage Rate Payments—which is left for further clarification between the U. M. W. A., the U. S. Government and the W. L. B.

In the decision of the W. L. B. of October 26, the Board said:

> "All the other provisions of the proposed Illinois Agreement relating to wages merely embody wage adjustments which the Board has already approved except the provision of paragraph 13 that the sum of $40 will be paid to each mine worker on the payroll from April 1, 1943, to June 20, 1943, as a retroactive adjustment and in full settlement and discharge of all accrued portal-to-portal compensation. We think this amount represents a reasonable settlement and we can approve it."

Nothing could be plainer. The mere fact that the Government took over the mines does not relieve the operators of their responsibility of the $40 compromise payment for the back portal time.

The U. S.-U. M. W. A. contract now in force is a combination of the application of the basic agreement, 1941-1943, the supplemental six-day work agreement, the authorizations of the W. L. B. and the Ill.-U. M. W. A. supplemental agreement.

Section I of the U. S.-U. M. W. A. contract merely relieves the Government from immediate payment out of Government funds for "portal-to-portal" back pay as provided in Paragraph 13 of the Ill.-U. M. W. A. agreement.

[fol. 208] PLAINTIFF'S EXHIBIT No. 44

Executive Order

Possession and Operation of Coal Mines

Whereas widespread stoppages have occurred in the coal industry and strikes are threatened which will obstruct the effective prosecution of the war by curtailing vitally needed production in the coal mines directly affecting the countless war industries and transportation systems dependent upon such mines; and

Whereas it has become necessary for the effective prosecution of the war that the coal mines in which stoppages or strikes have occurred, or are threatened, be taken over by the Government of the United States in order to protect the interests of the nation at war and the right of workers to continue at work:

Now, Therefore, by virtue of the authority vested in me by the Constitution and laws of the United States particularly the War Labor Disputes Act (Public Law 89, 78th Congress), as President of the United States and Commander-in-Chief of the Army and Navy, it is hereby ordered as follows:

The Secretary of the Interior is authorized and directed to take immediate possession, so far as may be necessary or desirable, of any and all mines producing coal in which a strike or stoppage has occurred or is threatened, together with any and all real and personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines, and to operate or arrange for the operation of such mines in such manner as he deems necessary for the successful prosecution of the war, and to do all things necessary for or incidental to the production, sale and distribution of coal.

In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. He shall permit the management to continue its managerial functions to the maximum degree possible consistent with the aims of this order.

The Secretary of the Interior shall make employment available and provide protection to all employees in resuming work at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protec-

tion, provided that such concerted activities do not interfere with the operations of the mines.

[fol. 209] The Secretary of the Interior is further authorized and directed to offer to the duly constituted representatives of the workers' own choosing a contract or contracts governing the terms and conditions of employment for the period of the operation of the mines by the government, in accordance with the opinion of the National War Labor Board in the matter of Illinois Coal Operators Association and United Mine Workers of America of October 26, 1943, and with such further directives as may be given by the War Labor Board. When any such contract has been agreed upon, the Secretary of the Interior shall apply under Section 5 of the War Labor Disputes Act to the National War Labor Board for the approval of such contract and such changes in the terms and conditions of employment as may be authorized therein.

Possession and operation of any mine or mines hereunder shall be terminated by the Secretary of the Interior as soon as he determines that possession and operation hereunder are no longer required for the furtherance of the war program, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking possession thereof.

Nothing in this order shall be construed to repeal or amend Executive Order No. 9370 dated August 16, 1943, authorizing the Economic Stabilization Director to take certain action in connection with the enforcement of directives of the National War Labor Board.

Franklin D. Roosevelt.

The White House, November 1, 1943.

[fol. 210] PLAINTIFF'S EXHIBIT No. 45

List of Compensible Man Trip Accidents

1939

Mike Underwood, Loader, age 22, was injured at No. 2 Mine 10-26-39. Man trip ran away and bumped rear of trip of loads. Laceration lip and cracked tooth. Returned to work 11-6-39, time lost 10 days. Compensation cost $33.52 (dental bill). Foreman, G. V. Olive.

Mathias Wingo, Trackman, age 38, was injured at No. 1 Mine 6-20-39. Man trip motor collided with haulage motor, throwing man against car. Contusion of chest. Returned to work 7-5-39, lost time 14 days. Compensation cost $9.75. Foreman, Gregory and Corley.

1940

James Baker, Loader, age 43, was injured at No. 1 Mine on September 14, 1940. Man trip ran into wrecked tram—man hit chest against end of car. Contusion of chest. Returned to work 10-7-40, lost time 19 days. Compensation cost, $22.30. Foreman, Con Owens.

Ernest Waldron, Trackman, age 35, was injured at No. 1 Mine on October 10, 1940. Man trip wrecked—caught elbow between corners of two cars. Fracture arm above elbow. Compensation cost, $322.21—Supplemental $923.30, total $1245.51. Foreman, Clarence Joyce.

1941

None.

1942

None.

1943

George W. Whitt, Loader, age 39, was injured at No. 1 Mine August 20, 1943. Mantrip wrecked on "Bull dog". Laceration right little finger. Returned to work 9-6-43, lost time 17 days. Compensation cost, $25.71. Foreman, Dick Lawhorn.

Dave Adams, Loader, age 45, was injured at No. 2 Mine on May 10, 1943. While coming out on mantrip—trip stopped suddenly and man was thrown forward in car. Multiple bruises of face. Returned to work 5-19-43, lost time 8 days. Compensation cost $2.57. Foreman, John L. Keene.

[fol. 211] #1 Mine

Tonnage by years:

1939	315,535
1940	502,550
1941	551,409
1942	563,214
1943	417,826 through October
	2,350,534

Compensible Mantrip Accidents

Total number compensible mantrip accidents Jan. 1, 1939—Oct. 31, 1943,	4
Number of tons per mantrip accident,	587,634
Total compensation costs all mantrip accidents,	$1303.27
Cost per ton for mantrip accidents,	.00055
Total number days worked Jan. 1, 1939—Oct. 31, 1943,	1199
Total number mantrips operated Jan. 1, 1939-Oct. 31, 1943	39,790
Number of mantrips operated per mantrip accident,	9948
Total days lost by employees due to mantrip accidents,	211

[fol. 212] #2 Mine

Tonnage by years:

1939	368,551
1940	524,763
1941	464,082
1942	548,568
1943	421,626 through October
	2,327,590

Compensible Mantrip Accidents

Total number compensible mantrip accidents Jan. 1, 1939-October 31, 1943,	2
Number of tons per mantrip accident,	1,163,—
Total compensation costs all mantrip accidents,	$36.09
Cost per ton for mantrip accidents,	.0000015
Total number days worked Jan. 1, 1939-Oct. 31, 1943,	1208
Total number mantrips operated Jan. 1, 1939-Oct. 31, 1943	32,900
Number mantrips operated per mantrip accident,	16,450
Total days lost by employees due to mantrip accidents,	18

[fol. 213] DEFENDANTS EXHIBIT "A"

Constitution of the International Union United Mine Workers of America, Washington, D. C. adopted at Cincinnati, Ohio. November 1, 1942.

Article Two

Third. To demand that not more than six hours from bank to bank in each twenty-four hours and not more than five days per week shall be worked by members of our organization.

[fol. 213a] DEFENDANTS EXHIBIT "B"

Wage Scale Increases Asked and Proposed Corrections of Mining Practices for the Bituminous Coal Industry Adopted by the International Policy Committee of the United Mine Workers of America

Submitted to Appalachian Join Wage Conference 3/10/43

New York, N. Y., March 9, 1943.

The International Policy Committee declares the recommendations contained herein to be the policy of the United Mine Workers of America.

This policy shall be a guide for all districts in the bituminous regions in the negotiating of wage agreements. It shall serve in lieu of all wage scale resolutions submitted to the International Policy Committee from the International Convention, District Conventions, local unions or from any other source.

Appalachian Joint Conference Proposals

1. *Contract Termination.*

That the Appalachian Joint Wage Agreement be extended from April 1, 1943, to March 31, 1944, inclusive, with the following modifications and changes, viz., during the contract period, either party, through representatives designated by the Operators or the International Union, United Mine Workers of America, may terminate the Joint Wage Agreement by giving thirty (30) days' notice in writing, in advance of such cancellation.

2. *Hours of Labor.*

That the maximum hours and working time provisions of the Joint Wage Agreement, including the supplemental agreements regarding the six-day week, be reaffirmed with the following modifications:

(a) The six-day week to terminate when the war emergency ends.

(b) To conform with the basic and legal requirement for the industry, the maximum hours and working time provisions be amended to establish portal-to-portal for starting and quitting time for all underground workers.

3. *Wage Rate Increases.*

Combined cutting and loading rates shall be increased 28¼ cents per ton; 25¼ cents of this amount shall be added [fol. 214] to the existing rates for loaders and 3 cents to existing cutting rates.

Rates for all classifications of inside and outside day men shall be increased $2.00 per day, except those classifications with standard wages, namely, greasers, trappers, flaggers, switch throwers and slate pickers, who shall be increased an additional 85 cents per day.

Monthly men shall receive a directly proportionate increase.

The minimum day rate shall be $8.00 without exception.

The increased rates include compensation to meet the portal-to-portal starting and quitting time.

Pick mining rates shall be increased 28¼ cents per ton.

Yardage and deadwork rates shall be increased 28.57 percent.

Cutting rates on track mounted machines shall be increased 3 cents per ton. Where tonnage rates are paid on conveyors or other mechanical loading devices, the increase shall be 25¼ cents per ton. Footage and yardage rates shall be increased 28.57 percent.

4. *Standard Classifications.*

Standard classifications of men employed on the various mechanized units shall be established in order to eliminate varying sizes of crews. Such classification shall be uniform both as to day and tonnage workers.

5. *Monthly Men in Strip Mining.*

The day and monthly men employed at strip mining operations will have the same wage increases applied and governed by the basic $2.00 per day increase.

6. *Double Time for Sunday.*

Double time shall be paid for all work performed on Sunday.

7. *Vacation Payment.*

The compensation payments for the vacation period shall be increased to Fifty Dollars ($50.00.)

8. *Exemptions under This Contract.*

The term "mine worker", as used in this Agreement, shall include all persons inside or outside of the mine, except the superintendent.

9. *Differentials.*

Existing inequitable differentials within and between districts shall be eliminated, including cutting and loading [fol. 215] rates and all other factors operating to maintain such differentials and inequalities.

10. *Shifts.*

The operation of three shifts within twenty-four hours and concentrated methods of mining, that prevent rock dusting, necessary ventillation to dilute inflammable and noxious gases, and proper inspection, have increased the hazards and resulted in great loss of life. In order to promote safety and establish sound mining practices, we, therefore, demand modification of the provision in the Appalachian Joint Wage Agreement dealing with shifts by limiting the number of shifts so that not more than two can be operated within any twenty-four hours.

11. *Other Provisions.*

Operators who are parties to this Agreement shall include clauses to protect the wage scales and conditions of employment whenever any of their mines are let to any corporation, company or individual for operating purposes. This obligation is to protect the contract and preserve the interest of the miners.

The operator shall be responsible for delivering mine cars to and from the miners' working places.

Only union-made explosives, mine supplies and tools shall be made available for use by the mine workers.

Mine workers shall not be required to pay for safety equipment and devices, including electric light and cap tentals. All day and monthly men shall be furnished necessary tools and equipment without charge.

There shall be no charge to the miners for blacksmithing.

The work week shall begin on Monday and shall be designated in the Agreement.

It will not be a violation of any terms of the Agreement for the mine workers to cease work to prevent shipment of coal to non-union concerns or where a strike is in progress.

12. *District Conferences and Agreements.*

Joint conferences of districts in the Appalachian Region shall be held concurrently with the Appalachian Conference. All other districts shall meet in joint conferences after the Appalachian Agreement is negotiated for the purpose of negotiating district wage agreements pursuant to the basic agreement and this policy.

Wage scale resolutions, affecting local working conditions and rules, shall be made a subject for consideration by all district joint conferences.

Districts shall not negotiate agreements which grant more favorable conditions to the Operators than obtain in the basic contract.

All supplemental agreements shall be approved by the International Union.

[fol. 216] DEFENDANTS EXHIBIT "C"

Washington, D. C.
June 14, 1943.

Supplemental Agreement

The Central Pennsylvania Coal Producers Association and the United Mine Workers of America hereby do agree to continue in effect the Appalachian Agreement dated June 19, 1941, the Supplemental Agreement dated January 29, 1943, and the underlying District No. 2 Wage Agree-

ments, which terminated on March 31, 1943, except as amended and modified herein as follows:

1. In consideration of the payments by the Operators, whether engaged in drift, shaft, slope, strip mine, preparation plant or coke oven operations, of the "portal-to-portal" or "travel time" to their employee members of the United Mine Workers of America, and in full settlement thereof, the United Mine Workers of America agrees to accept in behalf of its members and the operators agree to pay to each and all of its said employees, whether working inside or outside the mine and including monthly men, the sum of $1.30 per day as compensation for the "travel time" of said employees. This said sum of $1.30 per day is agreed upon by the parties hereto to prevent inequities and inequalities, to retain proper relation of wages, proper relation of wages to cost, and to maintain proper and existing competitive factors, marketing methods, rates and other factors customary and inherent in the industry. The payment by the Operators of "travel time" or "portal-to-portal" subsequent to April 1, 1943, is not to be construed by the United Mine Workers of America, by any of its members, or anyone else, as recognition by the Operators of any liability for "travel time" prior to April 1, 1943, nor admission that if [fol. 217] there were a liability, it had not been settled. It is the express intent of all parties hereto that payment by the Operators for "travel time" pay to their employees subsequent to April 1, 1943 and the payment of the sum stipulated herein, shall be and is accepted by the parties as full payment for "travel time" and in full compensation for any and all such claims, if any, by any employee member of the United Mine Workers of America for "travel time", regardless of whether such "travel time" accrued either prior or subsequent to April 1, 1943. The United Mine Workers of America expressly pledges itself to use its good offices to discourage litigation or claims for "travel time" pay accruing prior to April 1, 1943, if any, and by its signature hereto, accepts for its members such agreed payments as stipulated herein in payment for all "travel time" liabilities, if any, prior to April 1, 1943 and will so advise and instruct its said members accepting the terms of this contract.

2. Able-bodied employees shall not be employed at a rate less than $.857 per hour, or $6.00 per day, plus travel time. Physically-handicapped men, boys and superannuated em-

ployees not able to perform normal work may be employed as greasers, trappers, flaggers, switch throwers and slate pickers at a rate of $.736 per hour, or $5.15 per day, plus travel time.

3. The spotting or pushing of cars is referred to the district for consideration.

4. Compensation for vacation with pay shall be increased from $20.00 to $50.00, payable $20.00 on the last payday in June, 1943, and $30.00 on the last payday in July, 1943.

5. The Operators shall furnish necessary tools to day and monthly men without charge. Mine Workers employed at [fol. 218] tonnage, yardage or footage rates shall continue to furnish their own tools as heretofore.

6. Safety equipment, including safety lamps, shall be furnished by the Operators without cost. This shall not include, however, personal wearing apparel such as hats, clothing, shoes and gossles.

7. The charge for blacksmithing shall be eliminated.

8. All employees at mines working six (6) days per week shall be given a fair and equal opportunity to work the six days during any week that the mine works six days. This is not to be construed as a guarantee to give each employee work for six days where work is prevented by reasons of breakdowns, accidents, operating requirements, unsafe conditions or for reasons beyond the control of management.

9. The Supplemental Agreement providing for the six-day work week dated January 29, 1943, shall be continued in effect during the time hereof, but upon the cessation of hostilities the workweek shall automatically revert to five (5) days per week.

10. The changes in the agreements herein provided shall be effective as of April 1, 1943. Retroactive payments due on lamp rentals and blacksmithing shall be paid promptly. All other retroactive payments shall not become due and payable until such time as the proper governmental agency, or agencies, shall have approved and placed into effect increases in maximum prices to compensate the operators for the additional costs ensuing therefrom. Thereafter, the retroactive payments due the mine workers shall be paid in

four equal installments on the four paydays next succeeding the date upon which such increases in maximum prices shall become effective.

11. The Operators agree that they will not lease any operating mines subject to the contract as a subterfuge for the purpose of avoiding the provisions of this agreement.

[fol. 219] 12. Where necessary the Operators shall have the right to rearrange the schedule and operation of mantrips, with due regard to the considerations of safety, convenience and efficiency.

13. This Agreement shall become effective upon its approval by the National War Labor Board and other governmental agencies including those necessary for the adjustment of maximum prices as herein provided.

14. This Agreement is an integrated instrument and its respective provisions are interdependent. In the event that any governmental agency of competent jurisdiction should delete, change, alter or modify any of its provisions, this Agreement may be declared null and void by either party signatory thereto.

15. The Appalachian Agreement dated June 19, 1941, the Supplemental Agreement dated January 29, 1943, and the underlying District No. 2 Wage Agreements, which terminated on March 31, 1943, except as amended and modified herein shall remain in effect until March 31, 1944.

16. This Agreement shall be effective until March 31, 1944.

[fol. 220] DEFENDANT'S EXHIBIT "D"

4th Draft—9/12/43.

Supplemental Agreement between the Appalachian Joint Conference and the Members Signatory Thereto, the International Union, United Mine Workers of America, and the Several Districts Affected

It is hereby agreed by and between the Appalachian Joint Conference and the assenting members thereof, the International Union, United Mine Workers of America, and the several Districts affected, that the Appalachian Wage

Agreement between the above-named parties, dated June 19, 1941, and the supplements thereto and the underlying District Wage Agreements and supplements, which terminated March 31, 1943, is extended as hereinafter provided, except as amended and modified as follows:

1. By reason of the emergency of war and as a contribution to the public welfare; to increase production of coal; to aid in the prosecution of the war and to promote stable and harmonious employer labor relations in the industry, it is agreed that an additional one hour and twelve minutes per day work time shall be added to the — sent basic seven-hour workday, making an eight-hour and twelve minutes shift for each inside mine employee in the accepted term of mine workers whose normal daily tasks require them to travel underground, except that this shall not, however, be construed as a guarantee to give each such employee work for any number of days per week or hours per day where work is prevented by reason of breakdowns, accidents, operating requirements, unsafe conditions, lack of market demand, shortage of transportation or for reasons beyond the control of management. It is agreed that for employees working underground the eight-hour and twelve minute shift shall mean eight and one-fifth hours subject to the orders and direction of the working force by the management. This means further, that employees [fol. 221] shall have no jurisdiction or control over the amount of travel time or the amount of work time at the face or elsewhere. Such work hours begin at the designated portal and end at the designated portal, exclusive of the lunch period not to exceed thirty (30) minutes and a tolerance not to exceed fifteen (15) minutes, a total of forty-five (45) minutes per shift, (the "designated portal" means the portal for each underground mine worker selected by the mine management for the mine worker to enter and depart from the mine. Due consideration shall be given to the convenience of the mine workers and economy of operation in such designation.)

The operators shall arrange the schedule of operation of man-trips and time of descent and ascent in the cage with due regard to considerations of safety, convenience and efficiency.

At all times where man-trips and/or cages or other form of transportation are used for carrying men, the manage-

ment shall post a notice advising of these schedules and state the time thereon of each scheduled man-trip. Matters of dispute as to the schedule or schedules posted shall be subject to the Rules of Procedure for settlement of disputes provided by the Agreement. Where no form of transportation is used and men walk to and from the portal, the same procedure shall follow as to the stating of the time of beginning and end of the shift by posting a notice. Travel time, where more than one method of transportation is used, shall be the sum total of the travel time of each form of transportation and travel. Where breaks occur between one form of transportation and another at shaft mines, waiting time at the bottom of the shaft is not travel time.

Outside employees employed above ground in each classification covered by the basic agreement shall work an additional one hour per day above the present basic seven-hour day, for which hour they shall be paid at the rate of time and one-half, except as provided in the Agree- [fol. 222] ment for workers engaged in continuous operations. Such mine workers shall also receive rate and one-half for the eighth hour. This same provision applies to workers employed in strip mines. This means that any outside employee in any classificati-n may be required, during this additional hour, to work under another classification to which he is assigned, provided that the rate of pay for his regular classification shall not be reduced; and further provided, that when he is required to work under another classification for which a higher rate is provided than his regular classification he shall be paid at such higher rate during the period he works under such higher classification. This shall not change the rates of pay for men who perform their usual and customary tasks in general utility work.

For inside employees the rates of pay, schedules of wages and classification of occupations remain in full force and effect as set forth in aforesaid agreements, except that there shall be added to each mine worker's daily rate of pay the amount of $1.20 for 1.2 hours per day, making eight hours and twelve minutes work per day, including travel time. For time worked in excess of forty hours in any week, the mine worker shall receive pay for such excess hours worked at time and one-half and rate and one-half, as the case may be.

The distribution of the aforesaid $1.20 for 1.2 hours for tonnage, footage and yardage workers shall be as follows:

(a) Shortwall mine machine rates shall be increased — cents (—¢) per net ton of which — cents (—¢) shall be added to the existing rates for loaders and — cents (—¢) shall be added to the existing shortwall cutting rates.

(b) The pick mining rates shall be increased — cents (—¢) per net ton.

(c) Cutting rates on track-mounted machines shall be in- [fol. 223] creased 70% of the shortwall cutting rate increase in each district, or — cents (—¢) per net ton.

(d) Yardage and deadwork rates shall be increased — percent.

(e) A basic inside day labor rate of $8.20 per day for eight hours and twelve minutes of work shall prevail throughout the entire Appalachian Area.

(f) The standard classifications contained in the Appalachian Agreement shall be amended and the rates paid as shown in the schedules attached hereto marked Schedule "A" and Schedule "B".

Where a mine worker leaves his place of work prior to the usual quitting time without the consent of the foreman in charge and before his daily task is finished, such mine worker may be disciplined by suspension or discharge. This shall not, however, penalize such mine worker where he is prevented from completing his normal task by reason of breakdowns, accidents, operating requirements, unsafe conditions or for reasons beyond the control of the mine worker or the management.

Where travel time is in excess of seventy-two (72) minutes, the operator, at his option, shall have the right to lengthen the work day by the amount of time necessary to increase the face time, not to exceed seven (7) hours per shift.

The operators shall furnish necesasry tools to day and monthly men without charge. Tools to men working on company houses shall be furnished in accordance with the customary practice.

It shall be the obligation of loaders to furnish their own tools at their own expense, and to compensate them the

basic tonnage rates shall be increased one-half cent (½¢) per ton and all related tonnage rates shall be increased proportionately. Tools which have been furnished loaders since April 1, 1943, shall become the property of the worker. Squibs, detonators and batteries and shooting cable used [fol. 224] in connection with explosives shall continue to be furnished in accordance with prevailing practices.

Safety equipment and devices, including electric cap lamps, shall be furnished by the operators without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes and goggles. In lieu of furnishing carbide lamps and carbide, the operator may, at his option, pay to the mine workers who use carbide lamps at their work five cents per day, and the mine workers shall continue to furnish their own carbide lamps and carbide.

No charge shall be made for blacksmithing.

If the United Mine Workers make a wage agreement during the period of this Supplemental Agreement, covering wages or working conditions with any person, corporation, association or district within the Appalachian Area more favorable to the operators than as contained herein, then this Supplemental Agreement shall be modified so that the operators who are parties hereto shall receive all of the benefits of such more favorable agreement.

For the duration of this Supplemental Agreement, no strikes shall be either called or maintained hereunder.

The operators agree that they will not lease any operating mines subject to this Supplemental Agreement as a sub-erfuge for the purpose of avoiding the provisions of this Supplemental Agreement.

Able-bodied labor employed as Greasers, Trappers, Flaggers and Switchthrowers shall be paid at a rate of not less than $0.857 per hour and $6.00 per day. Able-bodied labor employed as Slate Pickers shall be paid at a rate not less than $0.857 per hour and $6.00 per day. (These classifications when employed inside receive the $1.20 for the 1.2 hours as heretofore provided. When employed outside, these classifications receive pay for work performed on the eighth hour at rate and one-half.)

[fol. 225] The provisions relating to vacations with pay are hereby amended to substitute at the appropriate places therein Fifty Dollars ($50.00) for Twenty Dollars ($20.00).

The vacation payment for the 1944 period shall be made on the last pay day occurring in the month of June of that year.

All employees at mines working six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual workmen during the week for the purpose of denying them six days' work is prohibited during the term of this Supplemental Agreement. This shall not, however, be construed as a guarantee to give each employee work for six days per week where work is prevented by reasons of breakdowns, accidents, operating requirements, unsafe conditions or for reasons beyond the control of management. Individuals required to work longer hours temporarily in any one shift because of accidents or emergencies shall be paid at the rate of time and one-half for such actual time worked in excess of eight hours and twelve minutes. This overtime shall not be used to pyramid the overtime paid after forty hours of work.

Work performed on the seventh consecutive day is optional, but when performed shall be compensated for at double time rates.

This Supplemental Agreement, as to general wage rates, may, on thirty (30) days notice from either party, be reopened for negotiation at the end of the first contract year. The foregoing sentence shall not preclude the parties from mutually agreeing at any time during the term of this Supplemental Agreement, on changes in general wage rates, subject to such approval by the appropriate governmental agencies as may be required by the Act of Congress of October 2, 1942, and the Executive Orders and Regulations issued [fol. 226] thereunder. Furthermore, if at any time during the term of this Supplemental Agreement a significant change occurs in government wage policy, either party shall have the right to request negotiations on general wage rates.

This Supplemental Agreement is an integrated instrument and its respective provisions are interdependent, and shall be in effect only after the approval hereof by the appropriate governmental agencies and after the granting by the Office of Price Administration of advances in maximum prices sufficient to cover the increased costs occasioned hereby.

It is agreed that the operators of mines in the Appalachian Area who become parties hereto shall be parties to

and participate in the conferences to negotiate the basic Wage Agreement to be effective after March 31, 1945.

Executed in the City of Washington, D. C., the — day of September, 1943.

[fol. 227] DEFENDANTS EXHIBIT "E"

The Secretary of the Interior
Washington

November 12, 1943.

MY DEAR MR. LEWIS:

I am enclosing a copy of a letter of resubmission and clarification which I propose to send to the Chairman of the National War Labor Board concerning those matters discussed by the Board, in its Resolution and in the letter of Mr. Davis, both dated November 5, 1943. The expressions of understanding in the enclosed letter were worked out as a result of conferences held between members of my staff and representatives of the United Mine Workers of America.

Will you please advise me in writing that, as President of the United Mine Workers of America, you are in agreement with the statements made in the enclosed letter.

Sincerely yours, (Sgd.) Harold L. Ickes, Secretary of the Interior.

Hon. John L. Lewis, President, United Mine Workers of America, Washington, D. C.

Enclosure.

[fol. 228] "E"

The Secretary of the Interior
Washington

November 12, 1943.

MY DEAR MR. DAVIS:

By Resolution dated November 5, the National War Labor Board approved the Memorandum of Agreement entered into between the Secretary of the Interior and the United Mine Workers of America on November 3, subject

to clarification and resubmission as to the provisions with respect to the payment of tonnage or piece workers and with respect to the "spotting" of mine cars; it was also stated, in your letter transmitting the Resolution, that it seemed to the Board that certain provisions of the Illinois Agreement were not applicable to the Government and should therefore be excluded. In accordance with the Board's Resolution I am sumbitting the following statements in clarification of the matters affecting terms and conditions in the coal mines.

1. For all inside tonnage and piece workers in the bituminous coal mines, the parties have assumed an average travel time throughout all areas of 45 minutes each day. The compensation for all such workers shall be computed as follows: The average rate of earnings per hour for each individual mine worker shall first be determined by dividing the total earnings for that mine worker at the existing regular established rates for all tonnage produced and yardage or deadwork done during the week or pay period by the number of hours worked at the face during that week or pay period (assuming 45 minutes travel time for each day.) This average rate of earnings shall then be paid to the mine worker for the first seven hours of work in each day during the week or pay period; and one and one-half this average rate of earnings shall be paid to him for the eighth hour in each day during the week or pay period (assuming 45 minutes travel time for each day); provided, however, that one and one-half this rate of earnings shall be paid to the mine worker for all hours in excess of 40 hours in each week, including worktime and travel time.

2. For each mine outside of the Illinois area where the practice now prevails the delivery of cars to the working places in the mines by pushing will be the subject of local negotiations and will not be prohibited where it is impracticable to deliver them to the working places otherwise than by pushing. Any controversy as to the continuation of the practice where it now prevails must be considered by the Operating Managers for the United States as a dispute, and shall be settled promptly in accordance with the customary grievance machinery.

3. Paragraph 12 of the Agreement entered into between the Illinois Coal Operators Association and the United Mine

Workers of America dated September 23, shall not be applicable to the Government without prejudice, however, to any position that the United Mine Workers of America may take with reference thereto in connection with any contract to be negotiated with the operators.

[fol. 229] 4. Completely without prejudice to whatever claim the mine workers may have against the operators for liability for portal-to-portal compensation accruing prior to the date of the agreement, paragraphs 13 and 14 of the aforesaid agreement between the Illinois Coal Operators Association and the United Mine Workers of America shall not be applicable to the Government; provided, however, that the compensation paid under the Memorandum of Agreement between the Secretary of the Interior and the United Mine Workers of America dated November 3, shall be construed to be in full settlement and discharge of all portal-to-portal compensation for the period of Government possession covered by the Memorandum of Agreement.

While it is understood that the Secretary of the Interior has no responsibility under the Memorandum of Agreement to pay compensation for portal-to-portal claims prior to November 3, it is recognized that the mine workers have vigorously asserted a claim of liability therefor against the operators, that lawsuits in connection therewith are now pending, that the Illinois operators have offered to settle this liability by the payment of $40 in accordance with the agreement of September 23, 1943, and that the War Labor Board in its opinion of October 26, 1943, has approved the payment of this sum as a reasonable settlement. It is recognized, moreover, that the mine workers have continued work in the belief that their contractual disputes with the operators would be adjusted and adjusted retroactively. Against this background it is clear that maximum productive efficiency is not likely to be restored so long as the claim for past due portal-to-portal compensation remains unsettled. This being so, it is the clear responsibility of the operators and the mine workers to settle this issue at once.

5. Paragraph 15 of the aforesaid Agreement between the Illinois Coal Operators Association and the United Mine Workers of America shall not be applicable to the Government, without prejudice, however, to any position that the United Mine Workers of America may take with reference

thereto in connection with any contract to be negotiated with the operators, and to any request that either the Secretary of the Interior or the United Mine Workers of America may make for negotiations on general wage rates if at any time during the term of the Memorandum of Agreement, a significant change occurs in the Government wage policy.

We are withholding the issuance of any detailed instructions pending the approval of the Board with respect to these matters. Since there is a considerable amount of confusion in the field and production is thereby being hampered, I shall appreciate it if the Board will handle these matters as promtply as possible.

Sincerely yours, Secretary of the Interior.

Hon. William H. Davis, Chairman National War Labor Board, Washington, D. C.

[fol. 230] "E"

United Mine Workers of America

November 12, 1943.

Honorable Harold L. Ickes, Secretary of the Interior, Washington, D. C.

My dear Mr. Secretary:

This acknowledges your letter of today, enclosing copy of a letter you propose forwarding to Mr. William H. Davis, Chairman of the National War Labor Board in clarification of the matters affecting terms and conditions in the coal mines.

As stated to you in conference this afternoon, the provisions set out in Paragraph 4 of your letter to Mr. Davis are not in full conformity with the understanding and interpretation I had of your memorandum of agreement transmitted by you to the Board on November 3, 1943. The policy Committee of the United Mine Workers of America approved the agreement in question and our membership throughout the industry returned to work under the belief that the Government, through your Department, would enforce the stated provisions of the Illinois Agreement as

approved and as modified by the War Labor Board. The Mine Workers of the country are of the opinion that the coal operators are required to pay $40. retroactive pay to each mine worker as stipulated by the agreement in question. Desiring to co-operate with you, however, in clearing these pending issues raised by the Board, I am reluctantly acquiescing with the paragraph afore-mentioned, in the hope that the Mine workers will receive this money.

May not the Mine workers now hope that they will receive full encouragement from you and your staff in seeing to it that the coal operators of this country make prompt settlement and payment to our men who have so long expected and believed, as a result of repeated Governmental assurances, that all of the adjustments and benefits derived from any agreement would be retroactive to April 1, 1943.

Very truly yours, (Sgd.) John L. Lewis, President, United Mine Workers of America.

[fol. 231] DEFENDANTS EXHIBIT "F"

Washington, D. C. November 18, 1943.

The Operators propose that the following provisions be included in a supplemental agreement:

1. All agreements, including district and local agreements, that existed as of March 31, 1943, shall be extended upon the same terms and conditions therein contained except as modified by this supplemental agreement.

2. This supplemental agreement shall include the Ickes-Lewis agreement as approved or modified by the National War Labor Board, subject to modification through the usual processes of collective bargaining.

3. This supplemental agreement shall be in effect only after the approval by the appropriate governmental agencies and after the granting by the appropriate governmental agencies of advances in maximum prices adequate to cover the increased costs arising therefrom.

4. The right of any person, partnership or corporation to remain under governmental control shall be preserved and

the signing of this agreement by parties signatory hereto shall in no manner affect this right.

5. Except for any person, partnership or corporation electing to remain under governmental control, the operators shall make the portal-to-portal payment of $40.00 as provided in the Illinois agreement, and there shall be included in this supplemental agreement appropriate clauses indemnifying the operators against portal-to-portal payment and liability to April 1, 1945.

6. This supplemental agreement shall be an integrated instrument and its respective provisions shall be interdependent.

7. All agreements as modified herein shall continue in effect through March 31, 1945.

[fol. 232] DEFENDANTS EXHIBIT "G"

Office of War Information National Labor Board

B-1127

For immediate release November 20, 1943.

The National War Labor Board today approved the following reply to the Secretary of the Interior's communication of November 12. The Board's vote was seven to five, the labor members and public member, Wayne L. Morse, dissenting.

The letter follows:

November 20, 1943.

MY DEAR MR SECRETARY:

This will acknowledge your letter of November 12, conveying certain statements in clarification of the terms and conditions of employment in the coal mines during the period of government operation. We also received on November 18 the tentative draft of your proposed instructions "to all Operating Managers for the United States for Bituminous Coal Mines."

On November 5, 1943, the National War Labor Board approved the Memorandum of Agreement between the Secretary of the Interior and the United Mine Workers. This approval was subject, however, to clarification and resub-

mission of those terms of the memorandum which related to the pushing of cars and, of particular importance, to the payment of tonnage or piece workers. We pointed out that the submitted agreement had been approved as respects compensation to employees on a day wage basis because such payment was in conformance with the stabilization program. In the first place, it provided, on the average, for eight full hours of productive work in each eight and one-half hour working day with daily compensation to the workers up to forty hours a week in the same amount as under the 1941-1943 agreement. Secondly, compensation at one and one-half times the hourly rate for all hours over forty, including travel time, was specified in accordance with the applicable provisions of the Fair Labor Standards Act. The following basic rules were applied and must be adhered to:

1. The total compensation under the new portal-to-portal contract for the first 40 hours in each week (including the assumed average travel time) must not exceed the compensation for the first 40 hours of each week under the old face to face contract.

2. The premium pay after 40 hours (including the assumed average travel time) must be calculated in accordance with the applicable provisions of the Fair Labor Standards Act.

[fol. 233] The question presented by paragraph 1 of your letter of November 12 is, therefore, whether the new provisions for compensation of inside tonnage and piece workers in the bituminous coal mines conform to these rules.

The method of computing compensation for inside tonnage and piece workers during the first 40 hours of each week, as set forth in paragraph 1 of your letter and as exemplified in your proposed instructions, does result in compensation for the first 40 hours of each week exactly the same as would have been paid under the old 1941-1943 face-to-face contract whenever travel time totaled 45 minutes a day. This method of computation for the first 40 hours can therefore be approved. The proviso at the end of paragraph 1 of your letter, however, cannot be approved. It undertakes to make specific application of the provisions of the Fair Labor Standards Act for all hours in excess of 40 in each week by paying one and one-half times the

straight time productive rate of the old contract for each hour after 40, including productive hours and travel time. So far as we have been able to find out there has been no ruling by the Wage and Hour and Public Contracts Division of the Department of Labor, or by the courts, that supports this method of computation either for tonnage workers or hourly paid workers.

On the contrary, the general practice of the Wage and Hour and Public Contracts division has been to determine the regular hourly rate of pay for computation of overtime from "the weekly wage (including production bonuses, if any) averaged over the regular number of hours worked per week." (Interpretative Bulletin No. 4.) The regular number of hours worked per week includes both productive and non-productive time. The latter may be paid for at a lower rate of pay than the productive time or it may be idle time spent in waiting or other non-productive time. (Interpretative Bulletin No. 13, and see letter to Dillon Anderson, Esq. from the Deputy Administrator of the Wage and Hour and Public Contracts Division dated July 17, 1941.) Under date of December 1, 1942 and January 5, 1943 (R1913 and R1913-a) the Administrator of the Wage and Hour and Public Contracts Division approved an alternative method of computing overtime compensation, in accordance with which the employer might elect to compute the overtime compensation on the rate applicable for the work performed during the overtime hours.

This general practice and its applicability in the case of a mine worker whose travel time is included in his working time under the Fair Labor Standards Act was set forth in our opinion of June 18, 1943 in the Northern and Southern Appalachian cases. It was further amplified in its particular application to the Illinois contract in the special concurring opinion of October 27 in the Illinois case where it was said, as to compensation for hours up to forty per week

> "For 8½ hours portal-to-portal, the 1941-43 Agreement requires the payment of $8.125. The same rate of pay must prevail as a regular rate of pay under the submitted contract if there is to be no wage increase."

[fol. 234] and as to payment for hours over forty

> "A rate of $8.125 for 8½ hours portal-to-portal would not represent a wage increase; but payment at 1½ times

this rate for all hours over 40 in a week would liquidate every possible obligation under the Fair Labor Standards Act."

Under the agreement between the government and the United Mine Workers, the method of computation outlined above would be based upon a rate of $8.50 for 8¾ hours portal-to-portal.

In the absence of an authoritative ruling by the Wage and Hour and Public Contracts Division of the Department of Labor, or by the courts, the War Labor Board cannot approve the method of calculating overtime pay outlined in your proviso since it goes beyond the above stated method of comptuation. Conformance with the Board's opinion, as above outlined, will necessitate but a minor change in your proposed method of calculating overtime but the change is necessary to conform with the requirements of the stabilization program.

2. Paragraph 2 of your letter which deals with the delivery of cars to the working places in the mines is approved, it being understood that a manager will not be required to relieve the miners from pushing the cars when it is impractical to deliver the cars to the working places otherwise than by pushing.

3. Paragraphs 3 and 4 of your letter disposes of paragraphs 12, 13, and 14 of the proposed agreement between the Illinois Coal Operators Association and the United Mine Workers dated September 23, 1943 in accordance with the suggestions in our letter to you dated November 5, 1943.

4. Your disposition of paragraph 15 of the proposed agreement between the Illinois Coal Operators Association and the United Mine Workers dated September 23, 1943, is approved.

5. It has been brought to our attention that during the period of government operation consideration may be given to the application to all the mine workers, including strip mine workers, coke oven workers, and top workers in shaft mines, of the provisions of paragraph 3 of the memorandum of agreement of November 3, 1943 under which the prevailing customary 30 minute lunch period is reduced to 15 minutes and to pay such outside workers for the additional

15 minutes at the rate of time and one-half. Such an application is in no way required by our action on the Illinois agreement. It seems advisable to draw this to your attention to avoid misunderstanding.

For convenient reference the paragraph of the Illinois agreement is quoted below:

> "For outside employees (including strip mine and coke oven employees) an additional one hour per day work time at time and one-half shall be added to the present basic seven-hour work day, making an eight-hour shift for outside employees, excluding lunch time which shall not exceed thirty minutes, except when breakdown of [fol. 235] equipment, accidents, shortages of transportation from the mine, or other causes beyond the control of the operator or operators prevent; *Provided,* however, that lack of market demand shall not permit the operators to operate on less than an eight and one-half hour shift for inside employees and on less than an eight hour shift for outside employees."

This paragraph, providing one additional hour of productive work at time and one-half, is entirely within the wage stabilization rules and was, therefore, approved by this Board. The relinquishment by underground workers of 15 minutes of their lunch period is an arrangement to provide eight full hours on the average of productive work at the face without an increase in the total hours, portal-to-portal.

If, however, during the period of government operation, it is deemed necessary that outside employees work 8½ hours and accomplish this by relinquishing 15 minutes of their lunch period in order to add 15 minutes to their productive time, such additional 15 minutes of productive time could be paid for at time and one-half without further approval by the War Labor Board.

May I add that we assume, as a matter of course, that the contract modifications approved by us with reference to the proposed Illinois contract of September 23, 1943, the memorandum of agreement of November 3, 1943, and your letter of November 12, 1943 are, during the period of government operation, to be applied to the several basic contracts in effect in the 1941-1943 period in the various min-

ing districts. If this assumption is not in accord with your understanding, will you please let us know at once?

Sincerely yours, William H. Davis, Chairman.

November 20, 1943.

Mr. Morse made the following statement for the record in casting his vote on the Board's answer to Mr. Ickes letter of November 12, 1943:

> "Let the record show that I am voting No on any Board action on the Ickes-Lewis Agreement because I consider the agreement contrary to the public interest. In view of my dissenting vote and opinion when the agreement was before the Board for approval, to which vote and views I still hold. I cannot approve any Board action which seeks to effectuate the agreement."
>
> Wayne L. Morse.

[fol. 236] Statement of Industry Members

In its action of today, the Board reemphasized its desire to facilitate, within the limits of its responsibility, the achievement of an additional hour of productive work, making eight full hours per day at the face.

We believe progress has been made toward clarification and solution of the problems that must be faced before there can be mutually satisfactory working relationships under private operation of the mines.

The Board approved the formula for computing earnings of piece workers for hours not in excess of 40 hours per week and drew attention to existing interpretations of the Fair Labor Standards Act that may be helpful in solving the problem of appropriate calculations of payment for overtime after 40 hours in a week.

The Board must conform its decisions to the Fair Labor Standards Act. Therefore, it could not approve the formula proposed.

(S.) George H. Mead, Frederick S. Fales, H. B. Horton, James Tanham.

November 20, 1943.

5172. 11-20-43.

[fol. 237] DEFENDANTS' EXHIBIT "H"

To All Operating Managers for the United States for Bituminous Coal Mines:

A summary of the terms and conditions of employment in those bituminous coal mines under Government possession which had contracts with the United Mine Workers of America for a period ending during the year 1943, as provided for in the Memorandum of Agreement entered into between the Secretary of the Interior and the President of the United Mine Workers of America on November 3 and as approved by the National War Labor Board, by actions dated November 5, 1943 and November 20, 1943, is set forth below. If your mines had such contracts with the United Mine Workers of America, you are directed, as Operating Manager for the United States, to put these terms and conditions in effect as of November 3.

Terms and Conditions of Employment

1. The work day shall be extended as follows, subject to the exceptions noted below:

(a) For all inside employees, a work day of eight hours and 45 minutes (including an assumed 45 minutes for travel time) is established with an intermission of 15 minutes for lunch which is not paid for, making a nine-hour day overall;

(b) For all outside employees (including strip mine and coke oven employees) a work day of eight hours and fifteen minutes is established, seven hours of which shall be paid for at straight time and one and one-quarter hours at time and one-half, with an intermission of fifteen minutes for lunch which is not paid for; making an eight and one-half hour day over all (an illustration of the method of computing the compensation for outside employees is set forth in the Appendix); and

(c) For outside employees whose normal work day heretofore has been eight hours, a work day of eight hours and thirty-five minutes is established, seven hours of which shall be paid for at straight time and one hour and thirty-five minutes at time and one-half (An illustration of the method of computing the com-

pensation for outside employees is set forth in the Appendix).

Exception: When breakdown of equipment, accidents, shortage of transportation from the mine, or other causes beyond the control of the management prevent; provided, however that lack of market demand is not to permit the management to operate on less than an eight and three-quarter shift for inside employees and on less than an eight and one-quarter hour shift for outside employees.

[fol. 238] *Exception:* Time and one-half shall be paid for any time worked in excess of the regular shift in any consecutive twenty-four hour period or in excess of 40 hours in any one week, *provided* that this principle shall not be used to pyramid the payment of overtime, and *provided further* that time and one-half shall not be paid where the regular rotation of shifts requires the working of more than one shift in any consecutive 24-hour period.

2. For all inside employees, work time shall begin at the portal and end at the portal; but in shaft mines, for the purpose of making the operations of lowering and hoisting the men orderly and safe; the man trips shall leave the bottom 10 minutes after the start of each eight and three-quarter hour shift and shall arrive at the shaft bottom five minutes before the end of each eight and three-quarter hour shift (it being understood that the eight and three-quarter hours are exclusive of the lunch period.)

3. All inside employees working on a day wage basis shall be paid the established regular hourly rate provided in the applicable district or other agreement, as amended by the Directive Order of the National War Labor Board dated June 18, 1943, in the Appalachian Dispute (Case No. 111-1284), and subject to the increases provided in paragraph 6 below, at straight rate for eight hours of productive time in each day during the week (assuming 45 minutes travel time for each day) and at special rate equivalent to 2-3 of the established regular hourly rate for the assumed 45 minutes of travel time in each day; *provided, however*, that time and one-half the regular established rate shall be paid for that portion of the productive time worked during the first five operating days in the week after 40 hours have ex-

pired (assuming 45 minutes travel time for each day); *provided, further*, that for all productive time worked in the sixth operating day in each week, time and one-half the regular established hourly rate shall be paid; and *provided*, further, that time and one-half the special rate for travel time (equivalent to 2-3 of the regular established rates) shall be paid for all travel time after 40 hours have expired in the week (assuming 45 minutes travel time for each day.) This paragraph is not to be construed to require payment of time and one-half on Saturday if the individual mine worker has voluntarily laid off on Monday, Tuesday, Wednesday, Thursday, or Friday of the week. In no case shall the payment of overtime be pyramided.

An illustration of the method of computing the compensation for inside day wage employees is set forth in the Appendix.

4. For all inside tonnage and piece workers in the bituminous coal mines, the parties have assumed an average travel time throughout all areas of 45 minutes each day. The compensation for all such workers shall be computed as follows:

The average rate of earnings per hour for productive time for each individual mine worker shall be determined by dividing the total earnings for that mine worker at the existing regular established rates for all tonnage produced and yardage or deadwork done during the week or pay period by the manner of hours worked at the face during that week or pay period (assuming 45 minutes travel time [fol. 239] for each day). This average rate of earnings shall then be paid to the mine worker for all hours of productive time worked in the week (assuming 45 minutes travel time for each day); *provided, however*, that one and one-half this average rate of earnings shall be paid to the mine worker for all productive time worked after 40 hours have expired in the week (assuming 45 minutes travel time for each day).

A special travel time rate equivalent to 2-3 of the average rate of earnings per hour shall be paid for the assumed 45 minutes of travel time in each day; *provided, however*, that one and one-half this special travel time rate shall be paid to the mine worker for all travel time after 40 hours have expired in the week (assuming 45 minutes travel time for each day).

An illustration of the method of computing the compensation for piece work employees is set forth in the Appendix.

5. The man trip motor crew is to be paid straight time for the first seven hours worked and rate and one half for all other time worked over seven hours.

6. The existing rates of compensation for able-bodied trappers, flaggers, switch throwers, greasers and slate pickers shall be increased in all other areas in accordance with the principles applied by the National War Labor Board for the Appalachian area in the aforesaid Directive Order of June 18, 1943.

7. For each mine outside of the Illinois area where the practice now prevails the delivery of cars to the working places in the mines by pushing will be the subject of local negotiations and will not be prohibited where it is impracticable to deliver them to the working places in otherwise by pushing. Any controversy as to the continuation of the practice where it now prevails must be considered by the Operating Managers for the United States as a dispute, and shall be settled promptly in accordance with the customary grievance machinery. In Illinois the pushing of cars as a regular practice and except in cases of emergency shall be prohibited.

8. All employees at mines which prohibited, produce coal six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual mine workers during the week for the purpose of denying them six days' work is prohibited.

Work performed on the seventh consecutive day is optional, but when performed shall be paid for at double rates.

9. The management shall furnish all necessary mine workers' tools at the management's cost. At the option of each tonnage mine worker, where the management has not already purchased the tools owned by the worker or entered into some satisfactory settlement with respect to that matter, the management shall purchase and the mine worker shall sell the tools the tonnage mine worker owns at a price which is equal to one cent per ton for all coal mined by each tonnage mine worker between April 1, 1943, and November 3, 1943, with a minimum payment of $3.00.

[fol. 240] Safety equipment and devices including electric cap lamps, and also carbide lamps shall be furnished by the management without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes, and goggles.

No charge shall be made for blacksmithing.

10. In all other respects, operations at your mines shall be conducted in accordance with the provisions of the existing applicable effective district or other agreements, as amended by the aforesaid directive order of the National War Labor Board dated June 18, to the extent that such provisions are not inconsistent with the provisions of the Memorandum of Agreement of November 3.

Any grievances or disputes as to the starting time or as to any other matters shall be handled in accordance with the established practices for the adjustment of such grievances.

(These instructions shall immediately be posted conspicuously at the mining property.

A copy of the Memorandum of Agreement of November 3 is enclosed.)

C. J. Potter, Deputy Coal Mines Administrator.

Enclosures.
Laub
Levy:mh

[fol. 241] Appendix

Computation of compensation is to be paid to mine workers employed on a day wage basis for work performed in an 8-3-4 hour shift, as provided in the Memorandum Agreement of November 3. For this example a rate of $1.00 per hour for straight time and $1.50 per hour for overtime has been assumed.

	Time Underground	Rate of Pay	Compensation Due		Total Time Underground Cumulative (in hours)
Monday	22.5 mins. (.374 hrs.) travel	$0.66⅔	$0.25		.375
	7 hours productive	1.00	7.00		7.375
	1 hour productive	1.00	1.00		8.375
	22.5 mins. (.375 hrs.) travel	.66⅔	.25		8.75
				8.50	
Tuesday (same as Monday)				8.50	17.50
Wednesday (same as Monday)				8.50	26.25
Thursday (same as Monday)				8.50	35.00
Friday	22.5 mins. (.375 hrs.) travel	.66⅔	.25		35.375
	4 hours 37.5 mins. (4.625 hrs.) productive	1.00	4.625		40
	3 hrs. 22.5 mins. (3.375 hrs.) Productive	1.50	5.0625		43.375
	22.5 mins. travel (.375 hrs.)	1.00	.375		43.75
				10.3125	
Saturday	22.5 mins. (.375 hrs.) travel	1.00	.375		44.125
	8 hrs. productive	1.50	12.000		52.125
	22.5 mins. (.375 hrs.)	1.00	.375		52.5
				12.750	
	Total Weekly Wage			57.0625	

[fol. 242] Compensation for Inside Day Man

(Assuming a regular rate of $1.00 per hour. Hours shown in each day are productive hours, assuming a travel time of 45 minutes for each day.)

Pay Period

	M	T	W	T	F	S	S
1st Week	8	8	8	8	8	8	
2nd Week	8	A	8	8	8	8	
3rd Week	8						

A—Absent

1st Week	37.75 × 1.00	=	37.75	
	11.375 × 1.50	=	17.0625	
	3.375 × .6666	=	2.25	
				57.06
2nd Week	37.00 × 1.00	=	37.00	
	3.375 × 1.50	=	5.0625	
	3.375 × .6666	=	2.25	
				44.31
3rd Week	8 × 1.0	=	8.00	
	.75 × .6666	=	.50	
				8.50
Total Compensation for Pay Period				109.87

[fol. 243] Time to be Paid for in Week Expressed in Decimals of Hours

Monday	.75	hours travel at 2-3 rate
	8.00	hours productive at straight rate
Tuesday	Same as Monday	
Wednesday	Same as Monday	
Thursday	Same as Monday	
Friday	.375	hours travel at 2-3 rate
	4.625	hours productive at straight rate
	3.375	hours productive at rate and one-half
	.375	hours travel at straight rate
Saturday	8.0	hours productive at rate and one-half
	.75	hours travel at straight rate

Cumulative Time for Man Working in Any Week

1 Day	.75	hours at 2-3 rate
	8.00	hours at straight rate
2 Days	1.5	hours at 2-3 rate
	16.0	hours at straight rate
3 Days	2.25	hours at 2-3 rate
	24.00	hours at straight rate
4 Days	3.00	hours at 2-3 rate
	32.00	hours at straight rate
5 Days	3.375	hours at 2-3 rate
	37.00	hours at straight rate
	3.375	hours at rate and one-half
6 Days	3.375	hours at 2-3 rate
	37.75	hours at straight rate
	11.375	hours at rate and one-half

[fol. 244] Compensation for Inside Tonnage and Piece Workers Where Records Are Kept on a Pay Period Basis

	M	T	W	T	F	S	S
1st Week:							
Tons	6	8	15	14	9	5	
Yardage	7.00	6.50			1.00	4.00	
Deadwork hours	½	0	0	00	0	1-½	
2nd Week:							
Tons	7	A	6	8	4	8	
Yardage		A	2.00		5.00		
Deadwork Hours	0	A	0	1	0	½	
3rd Week:							
Tons	8.85						
Yardage	2.00						
Deadwork hours	0						

"A"—Absent.

Earnings computed at established straight rate:	
98.85 net tons handloaded coal at $.87	$ 86.00
3½ hours of deadwork @ $1.00 per hour	3.50
Total yardage at established rates	27.50
Total earnings	$117.00
Productive hours (assuming .75 hours travel time for each day worked)	96
Average rate of earnings per hour $117.00 ÷ 96 =	$ 1.2187
2-3 average rate $1.2187 × .6666 =	$ .8125
Rate and one-half average rate 1.2187 × 1.5 =	$ 1.8281

1st Week:	37.75 × 1.2187 = $46.0059		
	11.375 × 1.8281 = 20.7946		
	3.375 × .8125 = 2.7422		
			$ 69.5427
2nd Week:	37.00 × 1.2187 = $45.0919		
	3.375 × 1.8281 = 6.1698		
	3.375 × .8125 = 2.7422		
			$ 54.0039
3rd Week:	8 × 1.2187 = $ 9.7496		
	.75 × .8125 = .6094		
			$ 10.3590
Total for Pay Period			$133.91

[fol. 245] Computation of compensation to be paid to all outside employees (including strip mine and coke oven employees) employed on a day wage basis for work performed in an eight and one-quarter hour shift, as provided in the Memorandum of Agreement of November 3. For this example a rate of $1.00 per hour for straight time and $1.50 per hour for overtime have been assumed

				Total Worktime Outside Cumulative—in Hours		
Day	Work Time Outside	Rate of Pay	Compensation Due	Straight Time	Time and One-Half	Cumulative Total
Monday	7 hours straight	$1.00	$7.00			
	1¼ hours at 1½ time	1.50	1.875			
			$8.875	7.00	1.25	8.25
Tuesday (same as Monday)			8.875	14.00	2.50	16.50
Wednesday (same as Monday)			8.875	21.00	3.75	24.75
Thursday (same as Monday)			8.875	28.00	5.00	33.00
Friday (same as Monday)			8.875	35.00	6.25	41.25
Saturday	8½ hours at 1½ time	1.50	12.375	35.00	14.50	49.50
Total Weekly Wage			$56.75			

* * * * * * *

NOTE: When a mine worker employed on a day wage basis performs work during the day or week at two or more classified occupations, bearing different rates, his overtime rate shall be computed as follows:

Divide the worker's total earnings for the day or week at the existing established classified rates as amended by the Directive Order of the National War Labor Board dated June 18, 1943, by the total number of hours worked during the day or week at the classified occupations (assuming 45 minutes for travel time in each day.) This will give the average rate of earnings per hour for the individual mine worker. One and one-half time this avgrage rate will constitute the overtime rate for the mine worker.

[fol. 246] DEFENDANTS EXHIBIT "I"

841

JEWELL RIDGE COAL CORPORATION

SPECIAL RULES

For the Safety and Operation of Mines

Adopted in Conformity with the Mining Laws of the State of Virginia (Sec. 1887-1)

TAKE HOME AND STUDY

OCTOBER 1, 1940
REVISED OCTOBER 1, 1941
REVISED JULY 1, 1942

843

JEWELL RIDGE COAL CORPORATION

Mine No. 1
JEWELL RIDGE, VA.

Mine No. 2
JEWELL VALLEY, VA.

SPECIAL RULES

For the Safety and Operation of Mines

Adopted in Conformity
with the
Mining Laws of the State of Virginia
(Sec. 1887-1)

October 1, 1940
Revised October 1, 1941
Revised July 1, 1942

SPECIAL RULES FOR THE SAFETY AND OPERATION OF MINES

Sec. 1887-1, Mining Laws, State of Virginia:

The operator of every coal mine shall have the right to adopt special rules for the safety and operation of his mine or mines, covering the work pertaining thereto inside and outside of the same, which, however, shall not be in conflict with the provisions of this chapter. Such rules, when established, shall be printed on cardboard, in the languages spoken by ten or more employees, and shall be posted in the drum house, tipple, or at some other conspicuous place about the mines, where the same may be seen by all employees at such mines. When such rules are so posted, they shall operate as a notice to all employees at such mine of their acceptance of the contents thereof. It shall be the duty of each mine operator to furnish a printed copy of such rules to each of his employees when requested by either or any of them.

GENERAL RULES

1. Strict compliance with the mining laws of the State of Virginia and of the following Company Rules shall be the first duty of each and every employee.

2. Report any dangerous condition or practice that may come to your attention.

3. Do not wear loose-fitting or ragged clothing. Gauntlet gloves must not be worn. Adequate safety-toed shoes and adequate safety hats are required by all employees in and about the mines. New miners will not be allowed to go in the mine without a full kit of tools in good condition.

4. Whenever a serious accident, or one that could have been serious, occurs at either mine, this information should be phoned to the main office immediately so that the Investigating Committee can be notified.

5. An Investigating Committee, composed of Superintendent, Company Inspector, Mine Foreman, Engineer, and Assistant Foreman or Electrician, shall investigate and report on all serious accidents.

6. Do not practice any tricks, horseplay, wrestling, or throw any material whatsoever while in or about the mines.

7. No switches shall be thrown except by motorman or brakeman.

8. Do not ride on any trip except the man trip.

9. Jumping on or off moving cars or motors is strictly forbidden.

10. Goggles shall be worn by every workman while doing the following kinds of work:

(1) Breaking up sandrock with a sledge hammer.

(2) Cutting hitches in sandrock for machine jacks.

(3) Operating rock drills.

(4) Scraping any kind of material with a cold chisel.

(5) Using either electric or acetylene welders.

(6) Operating emery wheels, lathes, or drill presses.

(7) Babbitting or soldering with a ladle.

(8) Using striking tools of any nature.

The workman will be responsible for the care of his goggles.

11. Do not pile material so high that it will fall over.

12. When a workman removes a cover from any opening in the floor, ground, valve, pit, or sewer, he must take such steps as are necessary to guard that opening so that no one will fall into it.

13. Every employee, except those in the proper discharge of their duties, is forbidden from opening and not closing any door used for directing ventilation, tampering with, moving or handling any ropes, wires, motors, mining ma-

chines, cars, air compressors, switches, signals, lights, notices, tools, machinery or other equipment of any kind, inside, outside, or about the mine.

14. Rock drillers, sand driers, and oil or calcium sprayers are required to wear respirators while on duty.

15. When an employee is injured in the course of his employment, it shall be his duty to report such injury, no matter how trivial, within 24 hours, to his Assistant Foreman or the Mine Foreman. If the injury be of such a serious nature that he is unable to report in person, the Mine Foreman and Assistant Foreman shall forthwith file a report of same in the company office, including names of witnesses, within 24 hours.

16. All employees, upon entering the mine, shall go directly to their working places (do not take short cuts over dangerous places); and no person shall be permitted to loiter in or about the mines, buildings, or machinery at any time. Loitering or sleeping around the sand house or sand drier is positively forbidden.

17. Brattice men shall see that all debris around where a stopping has been built is cleaned up, especially boards with protruding nails; and any lumber remaining from the job shall be gathered up and moved to the next break-through where a stopping is to be built. He shall not put a belt on a running pulley. Brattices must be hitched six inches in the solid.

18. Look out for trip light on the rear end of trips before proceeding along haulage roads. Always be on the lookout for the second approaching motor. Be careful while walking along haulage roads.

19. Any person wishing to be absent from duty should apply to and receive permission from the Mine Foreman.

20. Each employee, before entering the mine, shall deposit his check on a board provided for that purpose, or deposit check with lamphouse man. On leaving the mine each man must remove his check from the check boards. Failure to check in and out will be cause for discipline.

21. After finishing work, all day men, or company men, shall put their tools in the place provided by the Mine Foreman or Assistant Foreman. All scrap iron, salvaged material, etc., must be deposited in the proper place.

22. Every employee whose duties require him to work with an appliance or piece of equipment of any kind shall report any defects to his foreman.

23. Any person found with tools belonging to another, or found taking tools belonging to another, without the owner's permission, shall be subject to discharge and prosecution.

24. If in doubt as to the meaning of any rules, employee shall apply to the Foreman, or Superintendent, for explanation.

25. Penalties are provided for ordinary infractions of the Company Rules, but a more severe penalty may be given for a flagrant violation resulting in severe accident, fatal injury, or unwarranted destruction of property.

26. No employee of this company is required or expected to work in any place of unnecessary danger, or to do anything in conflict with the Mining Laws of the State or with the Company Rules. A faithful observance of these Laws and Rules is expected and required.

27. Derails shall be installed on all entries going to the rise or dip, at a location approved by the Superintendent and Inspector.

28. Safe working clearance should be made and maintained at all switch throws.

RULES FOR MAN TRIPS

29. All man trips shall be handled with caution, and every foreman in the man trip shall be responsible for the safety of the men and see that all rules covering these trips are complied with.

30. All man trips shall come to a **full stop,** and a signal shall be given by official in charge of man trip, before anyone gets on or off. The official in charge must give signal before trip is moved.

31. No standing up or changing from one car to another while trip is in motion will be tolerated.

32. All men shall ride on the off side from trolley wire, and cars shall not be overcrowded.

33. The speed of the man trip shall not exceed *6 miles per hour,* and motorman shall keep trip in control at all times in order that he may stop trip within the length of itself.

34. No man trip other than the regular man trip shall run except on orders from the Mine Foreman.

35. Wrestling, throwing materials, or horse-play of any kind is positively prohibted on any man trip.

36. One car in each trip will be designated as a tool car and all tools must be deposited in this car; no one shall be permitted to ride in this car.

Penalty for failure to observe any of the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR SAFETY LAMPS

37. Tampering with, or rough handling of, an electric cap lamp is a violation of the rules of this company.

38. Employees are absolutely prohibited from taking their electric cap lamps home with them.

39. Under no conditions shall an electric cap lamp be used for shooting.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR LOADERS OR MINERS

40. The miner is responsible for his electric cap lamp from the time it is checked out until it is returned to the lamp house.

41. Each miner shall go directly to his working place, and on entering his working place he shall examine it carefully, take down all loose and dangerous roof rock with a slate bar or wedge, or make it safe by timbering, and otherwise make his place safe before proceeding with his work.

42. TIMBERING AND CLEARANCE: Regardless of roof conditions, timbers must be set in clean-up places, as near the face as the safe operation of the cutting machine will permit. In ROOM work, timbers on the clearance side shall not be set less than forty-two inches from the track and on the gob side not less than thirty-six inches from the track. A miner, on entering his place and finding a fresh cut, should first examine his top and set a side timber on each side of track not more than twenty-four inches back from the face. Center or safety timbers shall then be set BEFORE any shots are fired. Header blocks are to be used on all timbers as directed.

43. On main trolley haulways there shall be maintained continuous clearance of not less than fifty-four inches from the track on the side opposite the trolley wire and a clearance of not less than thirty-four inches from the track on the wire side.

44. Every miner, during his shift, shall keep his working place safe at all times. He shall bar down or timber properly all doubtful or dangerous pieces of bad top and obey, without delay, all orders from his foreman in respect to these matters. The vibration method of detecting bad top, by using the finger tips and tapping roof with a pick, is to be used.

45. Should an unsafe condition arise through failure to get proper supplies, defective material, or other causes which would endanger your life or that of others, cease work at once and notify the Assistant Foreman.

46. No miner shall leave his working place during his shift to visit other working places on his section, or other portions of the mine.

47. See that cars in your working place are secured with an approved car stop.

48. Never carry tools or other materials on your shoulder; they may come in contact with electric wires or loose pieces of roof and result in personal injury.

49. Each miner shall provide himself with the proper tools for the safe performance of his duties. These shall include a pick, a shovel, a dust

shovel, a shooting battery, a saw, a slate bar, a wedge, a hammer, a hundred-foot shooting cable, an approved tamping bar, an explosives knapsack, and an exploder container. Tools with mushroomed heads, broken handles, or loose heads are prohibited from being used.

50. Every miner shall notify the Assistant Foreman of his timber requirements at least one day in advance. In case of an emergency the timbers may be ordered immediately.

51. Miners are positively forbidden to move cars in the working places or to drop cars back along the rib for loading. Motor crews will place all cars, and brakemen will attach or detach approved car stops.

52. Miners are absolutely not permitted to remain at the face of a working place while the machine is cutting.

53. Listen for motor and be in the clear when cars are placed at your working face. Do not stand or sit near a switch or curve when motor or cars are passing.

54. Before returning to work after firing a shot, make a careful examination as to the condition of the roof.

55. When cleaning up for the cutting machine at the end of the shift, each miner must see that his place is properly "squared up" and ready to be cut. All top scales, drawrock, loose dirt and slate must be picked up and moved back out of the way.

56. Ribs designated as "clean side ribs" **must be kept clean at all times as directed.**

57. Inspect all empty cars placed up in your place and remove all dirt, sand, timbers or supplies before starting to load.

58. Rock shall be broken down to a convenient size to handle, and no rock shall be cribbed or loaded above the top of the car.

59. Tools not being used shall be placed along the rib in an orderly manner 10 feet back of the working face.

60. **All "bug dust" or machine cuttings must be removed from the kerf** and either gobbed well in the clear or loaded out of each working place before shots are fired.

61. Care must be taken to see that foreign material is not loaded out with the coal. Mining tools, drills, wrenches, machine bits, spikes, wood chips, track bolts and metal scraps lost in the coal may cause serious injury to some one or damage to coal crushers and stoker apparatus.

Penalty for failure to observe any of the above rules shall be:

1st offense—warning.

2d offense—2 days lay off.

3d offense—5 days lay off, or discharge.

RULES FOR EXPLOSIVES AND SHOOTING

62. Only one day's supply of explosives and detonators shall be taken in the mine at one time.

63. The company sells permissible explosives and Cardox and proper detonators for use with them. No employee shall take into the mine or use any explosive or means of firing it except that supplied or approved by the company. The company reserves the right to determine the quantity of explosive to be used in any one shot. In no case shall more than one kind of explosive be used in the same hole. Cardox must be wired with approved wire.

64. Exploders or detonators must be carried in wood containers.

65. Explosives must be carried in a suitable knapsack or other safe receptacle.

66. Explosives and detonators must be stored in cubby holes 15 feet apart at least 100 feet from the face of working place.

67. Only one shot shall be fired at a time, except by special permission of the Mine Foreman. Clay or other incombustible material shall be used for tamping, and paper dummies shall be used in tamping holes.

68. All shots shall be fired by electric detonators and an approved battery. Under no circumstances shall shooting off trolley lines, power lines, or electric cap lamps be permitted.

69. A well-insulated wire shall be used for the connection to be insulated or "hot" terminal of a Cardox shell.

70. Cardox shells shall be wired at the working face only.

71. All shots must be placed in holes drilled for them. "Mudcapping," or dobie shooting, is positively forbidden.

72. After a powder shot has been fired, the miner, before starting to work, shall wait for at least 5 minutes before returning to the face.

73. No person shall return to a missed shot fired by electricity until all wires have been disconnected from battery and the ends of the cable twisted together, and he shall then report to the foreman for instructions.

74. No coal shall be shot off the solid except by special permission of the Superintendent or Mine Foreman.

75. Drill holes along rib in advance work shall be drilled parallel with the centers in the place and as close to rib as possible. Breakers or center holes may be drilled on an angle.

76. All drillings shall be removed from the hole before it is loaded.

77. It shall be the duty of every miner firing a shot to give the alarm by shouting "Fire"! At any place where pillars, or where places are driving together and are known or thought to be less than 20 feet apart, miners must notify the men working in these places before shooting.

78. Shots are not to be fired unless place is timbered according to standard.

79. The shooting cable should be kept away from the track and should be supported along timbers wherever possible. The wires at the firing end shall be kept twisted together, or short-circuited, except when shots are fired.

80. Bulldozing, such as mudcapping, will not be permitted in the breaking of rock. Assistant Foremen will furnish small hand drills for drilling rock that must be shot.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR TRACKMEN AND TRACK HELPERS

81. Before beginning work on the track, trackman shall examine the condition of the roof at the place where the work is to be done and make the same secure either by timbering or pulling down any loose slate that might be found.

82. Should it be necessary to remove a timber in order to lay track, wait until your Foreman has made an examination of the condition in your presence and has given you full instructions as to how the work shall be done. In entries where top slate is shot, special attention should be given to brows along the ribs.

83. Full-length angle bars and four-bolt splicing, of correct size, shall be used on all main-line track and haulways.

84. Spring switch throws shall be used on all switches.

85. Two guard rails shall be used on all switches except room and cross-cut switches.

86. No joint will be permitted in room track with less than two bolts. All jumpers must have holes drilled in both ends.

87. Do not leave track work until you would feel safe to run a motor over it yourself.

88. A repair job will not be considered complete until all refuse is cleaned up and all unused material is returned to its proper place or transferred to another job and track is filled level with the top of the ties.

89. Tools must be kept in good condition and free from mushroom heads. Do not use tools with broken handles or loose heads. Goggles are required when striking tools are being used.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR TIMBERMEN

90. A careful examination of the area around which work is to be done must be made before starting to work. Be sure that you are thoroughly familiar with conditions in the place before any change of timbers is made. Get full instructions from Foreman before any timbers are removed or changed. A careful examination must be made for concealed kettle bottoms, or other dangerous slate. If old timbers are to be removed, they must be shot out under supervision of the Assistant Foreman.

91. Do not work under exposed or bare power lines unless absolutely necessary.

92. Do not use hammers or other tools with mushroomed heads. Do not use any tools with broken handles or loose heads.

93. Do not leave a job until it is cleaned up or some arrangements made to have it cleaned up. Timbers must be set so as to give standard clearance on *entries* of not less than **fifty-two inches,** and in *rooms* not less than **forty-two inches,** on the clearance side.

94. When working on a fall, or timbering, if you cannot complete the job on your shift, you must notify Foreman or Assistant Foreman. Put up a danger sign to notify men approaching the place.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

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RULES FOR MOTORMEN

95. Only regularly employed motormen shall operate locomotives unless permission in writing is first granted by the Mine Foreman. This does not apply to persons inspecting or repairing locomotives.

96. Examine and oil your motor before starting to use it, and see that all parts visible are in good condition. If motor is not in good condition, notify the Shop Foreman or Mine Foreman before taking it into the mine.

97. When there is no regular motorman or brakeman on a trip or a motor, no one else is to assume the part of motorman or brakeman, or act as motorman or brakeman. All others, other than the regular motorman and regular brakeman must ride in an empty car attached to the motor.

98. No person, other than the brakeman, and he only in the discharge of his duty, can get on or off a motor or car while in motion.

99. No person shall be permitted to ride on the outside of any motor or car. Brakeman may ride rear bumper of trip.

100. Motormen and brakemen shall use care in handling motors and cars. It shall be their duty to see that there is a conspicuous light on the front, and a light on the rear, of each trip of cars on main haulage ways.

101. Motormen must give the brakemen sufficient time to couple and uncouple cars and throw switches.

102. Back-poling and nipping are forbidden unless absolutely necessary.

103. Employees operating motors shall not attempt to oil, open or adjust sandpipes, headlights, or do other repair work while the motor is in motion.

104. *No goosing or generating* the motor will be permitted.

105. Motormen are strictly forbidden to reach out over or under the motor to hold or attempt to hold sand pipe over the rail while motor is in operation.

106. Should it become necessary for the Foreman to send any one to the outside, either sick or injured, or for any other purpose, the Foreman must send an empty car or cars with separate motor to convey such person to the outside. Under no condition shall an empty car or cars be placed between the motor and loaded trip.

107. Under no condition shall a man car, or cars, be hauled on the rear end of a loaded trip, with the one and only exception of hauling the machine crews, at which time the trip shall be hauled at man-trip speed.

108. At No. 1 Mine, a car for machine crews may be placed on rear of trip at "Top of Hill" on Jones Fork. No machine crew car will be hauled from No. 4 Mine without a motor on rear of trip and car on rear of motor.

109. Motormen and brakemen must give special attention to materials (track, timbers, collars,

etc.), and must deliver them promptly. He will under no circumstances carry such material on top of his locomotive, but will haul them in an empty car.

110. At least two cars shall be placed between locomotive and cars carrying long timbers, pipe, etc.

111. Motormen shall not move trips until given proper signal by the brakemen. All signals to be given with a police whistle.

112. "Bucking" cars or motors on the tracks is positively prohibited.

113. An interval of at least 500 feet shall be maintained between locomotives traveling in the same direction.

114. Cars that are left standing must be secured with an approved "chain dog" or car stop wherever practical.

115. Motormen shall shut off controller whenever there is a power interruption and set hand brakes. On motors equipped with air brakes, the motorman is required to set hand brakes and leave controller in neutral before leaving the motor for any cause.

116. Motormen are warned not to be "power hogs." Whenever there is a power interruption or a low voltage, shut off your controller and wind your hand brake. Whenever power starts to become normal wait about 30 seconds to allow power to build back up to capacity. Sitting with

a controller open during power trouble is subject to disciplinary action.

117. Motormen shall not place the trolley pole on the wire while standing by side of motor without first seeing that the controller is on the "OFF" position and brake is set.

118. Motormen at the end of the shift are instructed to take their motors to the motor barn and not to leave their motors until they can get to the barn; and there report any needed repairs to their motor. The practice of leaving motors in driftmouth, at sand house, or on main line, is positively prohibited.

119. Motorman must not use his motor to push a switch back into place after it has been knocked out of line nor use a pole to push cars.

120. Motormen shall look out for machine crews at all times while machines are cutting on shift.

121. Clearance lines are plainly marked on the top at all sidetracks, coal and slate holes and storage holes; and it is the duty of every motorman and brakeman leaving a trip of loads or empties at any of these points to see that the cars are spotted behind these clearance lines.

Penalty for failure to observe any of the above rules will be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR BRAKEMEN

122. Do not operate a motor unless written permission has been given you by your Foreman.

123. Do not fail to see that cars standing on grades are always secured with an anchor chain or clevis. It shall be the duty of the brakeman to fasten and unfasten approved car stop.

124. Give proper attention to all safety derail switches and all ventilating doors. All ventilating doors must be kept closed except when passing through door.

125. Do not stand in front of approaching cars or motors.

126. Brakemen shall under no condition stand up in, or run along tops of, loaded or empty cars, while in motion.

127. Drags must be used on rear end of trips operating against grades.

128. Trip lights must be used at all times while running on main haulage roads.

129. Where slides are used in trips, do not place them under rear car.

130. **The use of a jack stick for putting on wrecked cars is positively forbidden.**

131. Brakemen are not permitted to let anyone ride on the loaded trip.

132. Brakemen must not stand on bumper or with their feet on or inside the rail, when making a coupling.

133. See that switch is thrown before giving the motorman the signal to proceed—all signals to be given with police whistle.

134. Cars and motors must not be coupled or uncoupled until they have come to a stop.

135. Brakemen are forbidden to ride on bumpers between cars, or *on* bumpers between car and motor, or *on bumper* in front of *any* car, whether empty or loaded, if being pushed; and *when empty must ride inside the car.*

136. Brakemen, after putting on a wreck, shall clean up all debris around the point of wreck and check the track for repairs. If track needs repairing, he shall report same to trackman or Foreman immediately.

137. Coupling "over top" is forbidden, and in such cases where a coupling cannot be made with a regular link and pin, a hook and link shall be used.

138. Slides removed from trip must not be left between rails, but placed well in the clear.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR MACHINE MEN AND HELPERS

139. It shall be the duty of the machine runner to see that his machine is in good repair and well lubricated. Examine all exposed parts carefully and promptly report all mechanical defects to Shop Foreman or Mine Foreman.

140. Do not attempt to make repairs to machine while the motor is running.

141. In the case of a power interruption or low voltage, the machine runner shall shut off his controller at once and at 30-second intervals he shall open his controller on the first point only to see if power has returned or not.

142. The machine men must examine carefully for loose slate or other unsafe conditions before starting to cut. Do not cut a place if in your opinion it is dangerous. If you are in doubt as to safety of the place after you inspect it, demand an inspection by the foreman in charge of your work.

143. The machine runner is responsible at all times for the safety of the helper. Riding on the cutter bar is forbidden.

144. The machine runner shall not attempt to cut a place without a helper, nor shall he operate his machine if more than he and his helper are in the place. He will not allow any one, other than his helper, to ride on the machine.

145. Mining machines shall be so placed upon sumping up and cutting across place, for each

cut, that the least possible amount of coal may be left under the cut, and the machine crew must sprag all coal where necessary.

146. The machine runner must see that the machine bits are set to gauge at all times.

147. See that the machine is set up properly and securely. Give special attention to setting jacks. Helper should hold jack in position until it is tightened securely in the top. Move the machine from the trucks to the coal in high speed. Before sumping cut is started machine must be put in slow speed and remain in slow speed during the entire cutting of the place. Do not pass over cutter bar at any time.

148. From time to time during progress of the cut, the machine runner and helper must examine the working place to see that it is not becoming unsafe. If a dangerous condition arises, the machine man may add or set additional timbers for his safety. If it is necessary to change or remove a timber while cutting, other timbers to take their place must be set under the supervision of a Foreman. Under no circumstances shall a machine crew continue to cut a place knowing that an unsafe condition has arisen. If it is a condition that cannot be corrected, remove the machine, if it is safe to do so, to a safe place and notify the Mine Foreman.

149. The practice of moving machines at the face by what is known as "walking the bits" is prohibited.

150. Mining machines must not be used for moving cars.

151. Machine men cutting on a section should watch for motors and not move out on the track in front of them, as the motors have the right-of-way at all times.

152. Always be certain that the bit clutch is disengaged and the *safety dog or clevis is placed on the cutter bar before you transport the machine.* Clevis *must* be kept on cutter bar at all times except while cutting chain is in motion. Do not let machine drift down grades.

153. It is the duty of the machine crew to remove all bits from the cutter bar before moving a machine to the shop for repairs.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR PUMPMEN

154. It shall be the duty of the pumpmen to keep the pumps in their charge in good condition for service and see that they perform the work required of them.

155. It shall be the duty of the pumpmen to keep the vicinity of the pumps under their care in an orderly condition. All worn-out pump parts, valves, fittings, etc., shall not be allowed to accumulate around a pump, but shall be taken to

the outside and properly disposed of in correct scrap pile.

156. Reports of insufficient power or low voltage shall be reported daily.

157. Ordinary repairs of pumps and pipe lines shall be made by pumpmen.

158. Serious damage or breakage of pumps, or failure to keep the water within safe limits, shall be reported immediately to Shop Foreman or Mine Foreman.

159. Precautions shall be taken against the loss of a pump through roof fall or drowning.

160. All machinery shall be stopped before attempting to oil or grease it.

161. A pump shall not be run unless it is equipped with an enclosed switch, starting resistance and properly grounded.

162. Couches or improvised beds at pump stations or other places are absolutely prohibited.

Failure to observe the above rules will call for disciplinary action as follows:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR FOREMEN AND ASSISTANT FOREMEN

163. It is the Foreman's and Assistant Foremen's first and unceasing duty to watch carefully and require employees under their supervision to strictly observe the Mining Laws of the State of Virginia and the Rules promulgated by the Jewell Ridge Coal Corporation for the purpose of avoiding injuries to employees. Any infraction of the Law or of these Rules which you yourselves cannot remove must, without delay, be reported to the Superintendent. You must require strict obedience to your orders and enforce rigid discipline.

164. Visit and carefully examine each working place in the mine or on your section at least once each day while miners of such places are at work. More visits shall be made where necessary.

165. See that each and every working place is properly secured by props or timbers where necessary. If a dangerous condition is found in a place, DO NOT LEAVE THE PLACE UNTIL IT IS MADE SAFE, or remove the person working therein until the place is made safe by some competent person designated for that purpose.

166. Examine roof conditions on all haulage ways that come within your jurisdiction, and remove, or have removed, any dangerous condition.

167. Examine all clean-up places to see that they are safe to cut; do not leave the safety of the place to the judgment of the machine men.

168. It is the duty of each Assistant Foreman to explain the rules pertaining to his work to every new man. It is also part of the Assistant Foreman's duty to take every new miner to his place and carefully instruct him as to the rules of the company, the proper way to clean a cut of coal, the proper disposal of gob, and in the dangers of traveling to and from his place.

169. It is the duty of the Foreman and Assistant Foremen to stop men under their supervision from prizing slate down on the mine cars, and to check slate cars for unduly large pieces of slate that might cause trouble and delay at the slate dump or in transit.

170. Each Assistant Foreman shall have, and keep in good condition, at least one piece of steel, properly sharpened, for churn drilling, on the section, to drill "down" rock with, in order to do away with any delays incident to waiting on arrival of an air compressor.

171. Examine the place where the men leave their buckets, extra clothing, do their shooting, etc., and designate a safe place for the workmen to eat their lunches, and spend their spare time.

172. It is the duty of the Assistant Foreman to see that every working place, and every place where cars are changed or left standing for a period of time, is equipped with an approved car stop, chain dog, or clevis. It is also part of the Assistant Foreman's duty to see that all broken car stops are taken out immediately to the shop for repairs or traded for a new one and

replaced on the track before the place is worked again.

173. It is the duty of the Assistant Foreman to see that all inexperienced men are placed with a safe, capable miner for a period of not less than 6 months for instructions in safety and mining by that miner.

174. It is the duty of the Foreman to keep extra track hammers and track tools in his tool house so that track crews can bring their damaged or unsafe tools there and exchange them for safe tools by Foreman's consent.

175. Foremen and Assistant Foremen shall not run motors or machines.

176. The Mine Foreman will keep a list of qualified motormen, brakemen, machine men and machine helpers in the main office at all times.

177. It is the duty of the Foreman and Assistant Foremen to check on low top that rakes off tops of cars and have this top drilled and shot immediately so as to eliminate loss of coal and the possibility of dust accumulation.

178. It is the duty of the Foreman to keep a record of Discipline Slips issued and of the action taken, and to see that all Assistant Foremen carry a book of these discipline slips and use them for *all* rule violations.

179. It is the duty of the Foreman and Assistant Foremen to give special instructions to men handling steel rails and long timbers.

180. It is the duty of the Assistant Foremen to check on the men's tools when they visit the working places and see that each man has full kit of tools in a safe, workable condition. Also to warn the men about carelessly leaving tools in a mine car or on top of mine cars which might go to the tipple or slate dump and cause serious trouble or delay to the tipple or slate dump or injuries to employees at these points, or to haulage crews.

181. Where it is necessary to have timbers removed or reset, the Assistant Foreman must be present to direct the moving and resetting of such timbers and make a careful examination before and after the timbers have been removed. Old timbers must be shot out when removed. Do not delegate this work to another workman.

182. The Assistant Foremen, on their respective sections, will be held accountable for accidents to machine men from falls of top whether they happen on night shift or day shift.

183. It shall be the duty of the Assistant Foreman to see that his motor or motors are equipped with approved rerailers, coupling pins, coupling link, and a hook and link in good condition, and well oiled before leaving the motor barn, and as often as possible while they are on the section.

184. It shall be the duty of the Mine Foreman and Assistant Foremen to make a written report of *all* injuries on the form required within 24 hours after the injury has occurred. Infraction of this rule will be cause for forfeiting Safety Bonus.

185. If the cut in any place "sets down" while machine is cutting, the Assistant Foreman will see that it is blocked by the machine crew while they cut the place.

Penalty for failure to observe any of the above rules will be immediate disciplinary action, which may be discharge for the first offense.

RULES FOR WIREMEN, BONDMEN AND REPAIRMEN

186. Always examine roof before beginning to work.

187. Care shall be taken to insure good mechanical construction and workmanship on all electrical installations.

188. Wiremen shall not work on "hot" lines of any kind without wearing tested rubber gloves and rubber shoes.

189. Sufficient hangers shall be used to keep all electrical circuits from touching rock, coal, or timbers at all times; and all wires installed shall be made tight and maintained accordingly.

190. All trolley wire through doors and over any place where men must pass under it shall be guarded.

191. At a point where a branch circuit leaves the main circuit there shall be placed a switch that can cut off all current from the branch circuit; these switches to be placed on both trolley and feeder lines.

192. Trolley wire must be hung not less than twenty inches outside of rail at No. 2 Mine and not less than twelve inches at No. 1 Mine, and must be as nearly parallel to it, both horizontally and vertically as is practical.

193. Give immediate attention to any defect you may see or have reported to you on live wires, wiring or bonding.

194. Telephone wires must be guarded where they cross over or under power lines.

195. Bondmen shall absolutely not attempt to put on a bond with arc weld machine without using a mask; and under no circumstances shall he leave nip of arc weld machine on wire when not using same for bonding with the idea of obtaining heat from the resistance.

196. Bonds must be placed on all new track before the trolley wire is put in service, and bonding must be properly maintained.

197. Trolley circuit rail returns shall be bonded at every rail joint and cross bonds inserted every 200 feet.

198. Feeder cables must be connected to trolley wire at intervals of 300 feet.

199. Repairmen shall be held responsible for the wiring, insulation and grounding of all equipment installed by them.

200. Connections to power lines, such as hoists, pumps, compressors, lights, or similar equipment, must be soldered, clamped, or a good mechanical

splice made; and each shall be properly fused and controlled with a starting resistance.

201. Motors must be properly oiled. They must not be over-oiled so that excess oil soaks fields and brush-holder wires.

202. Repairmen, after making repairs or inspection of any piece of equipment, shall be held responsible for the replacement of all bolts, nuts, studs and guards, and shall give special attention to the correct assembling of all equipment.

203. Repairmen and wiremen will be held responsible for tools required for their work and they shall be returned in good condition.

Penalty for failure to observe any of the above rules will be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR OUTSIDE AND SHOP

204. Motor or locomotive pits shall be kept covered or guarded by a guard rail when not in use.

205. Do not ascend a ladder unless you are certain it is safe and properly secured.

206. Do not attempt to place a belt on a running pulley.

207. You are forbidden to step over, across, or through a running conveyor belt.

208. Paper or greasy waste, rags, or other rubbish must not be allowed to accumulate. Do not burn rubbish near a building; always see that a fire is extinguished before you leave it. All scraps must be kept in a place designated for that purpose.

209. Tools, blocks, or other material must not be laid on overhead walks or cranes.

210. Guards must be placed on all gears and other places where required before starting machinery.

211. Do not reach or go under weight hanging on chain block.

212. Do not leave handle in a jack when holding weight. Do not place heavy material on ground or floor without putting blocks beneath to give clearance for hands and feet.

213. Goggles must be worn by employees when using emery wheels, lathes, drill presses, electric or acetylene welders, and babbitting or soldering with a ladle.

214. Do not use hammers or other tools with mushroom heads or broken or loose handles.

215. Planks or boards with nails protruding must not be left lying around.

216. All mine cars, motors, mining machines, pumps, haulage trucks and compressors must be properly blocked when making repairs.

217. Work must not be left until it is cleaned up or some arrangement made to see that it is cleaned up.

218. Do not allow acetylene torches to burn when not in use.

219. Loose clothing must not be worn by persons who are required to work around moving machinery.

220. Locomotive headlight bulbs shall not be supported by waste or any other combustible material.

Penalty for failure to observe the above rules will be;

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR TIPPLE

221. All men handling railroad cars must use a police whistle to give warning that the cars are in motion and must continue to give warning when they see anyone near the tracks or crossing the tracks.

222. All standing railroad cars placed above the tipple must have a sufficient number of brakes applied to safely hold the cars.

223. The application of brakes must always be on rear cars. The number of cars to be dropped at one time shall be limited to three.

224. The car dropper, whose duty it is to drop empty cars, must go to the rear end of the cars at the beginning of each shift and see that the proper number of brakes are applied to hold the

cars then on the side track. A positive stop block must be used on the first car standing above the tipple.

225. A buzzer or Claxon sounding apparatus must be installed and maintained at each tipple and sounded twice before any machine is started, allowing time enough between each sound for men to get in the clear before machinery is started.

226. All machinery must be so guarded as to protect operators or oilers, in the line of their duty, from injuries. Oiling and greasing while tipple is in operation is prohibited unless absolutely necessary in case of an emergency.

227. All guards must be in accordance with the approved standard.

228. Tipplemen are required to watch for all defective mine cars and mark same for repairs.

229. Jumping on loaded trips or walking upright or crawling over moving trips is absolutely prohibited.

230. Picking coal from around tipple, boiler houses, railroad cars, mine cars or slate dumps is prohibited.

231. Do not use telephone during a thunder storm any more than is absolutely necessary.

232. Walking on top edge of empty railroad car is absolutely forbidden.

233. The Tipple Foreman shall inspect fire-fighting equipment and keep in good condition

at all times. He shall see that the tipple and tipple tracks, including railroad tipple tracks, are kept clean and free from obstruction of any kind.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off.
3d offense—5 days lay off, or discharge.

RULES FOR HANDLING SUPPLIES

234. It is the duty of the Foreman and Assistant Foremen to see that all supplies taken into the mines are properly taken care of. If an excessive amount of supplies are taken in to complete a job, these excessive supplies must be promptly returned to the supply house where proper credit will be given.

235. The practice of allowing rails, jumpers, plates, and ties to lag behind in abandoned air courses, rooms, etc., is prohibited; and all such materials must be kept up with the working places.

236. Timbers, cap wedges, half-headers, and cross collars, being left behind in break-throughs, air courses and worked out rooms, is absolutely prohibited.

237. The practice of leaving spikes, bolts and plates lying in little piles on the gob is prohibited. Each Assistant Foreman shall have a central point on his section for the storing of such

supplies and shall maintain this station at all times.

238. Supplies, such as steel ties, pipe, and chain dogs that are damaged, shall be taken to the shop at once for repairs and not allowed to accumulate on the section.

239. The practice of using switch latch points for jumpers is prohibited.

240. It shall be the duty of the Assistant Foremen to see that all timbers set on their section are up to required specifications, and that all half-headers and cross collars are up to specifications with reference to diameter of timbers and thickness and shape of headers and collars.

241. All employees are requested to exercise care and economy in the use of materials and supplies; and employees will be discharged who, through carelessness or malice, waste material or destroy the property of the company or who are found stealing or carrying away such property.

Penalty for failure to observe the above rules shall be:

1st offense—warning.
2d offense—2 days lay off
3d offense—5 days lay off, or discharge.

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INSPECTOR

The Company Inspector will examine each mine for the purpose of seeing that the Mining Laws of Virginia and the Company Rules are carried out. The Inspector shall report to the Superintendent at the mine and the general office the condition of the mine at the time of the inspection. Should the Inspector find that the Assistant Foreman, or other foremen, are not enforcing the law and the safety rules, the guilty foremen shall be subjected to the same discipline as *any employee* who refuses to carry out the safety rules, with the exception that the foreman may be discharged on the first offense.

[fol. 884] PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 5246

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, An Unincorporated Association, Affiliated With the International Union, United Mine Workers of America, et al., Appellants,

versus

JEWELL RIDGE COAL CORPORATION, a Corporation, Appellee

Appeal from the District Court of the United States for the Western District of Virginia, at Roanoke

April 15, 1944, the transcript of record is filed and the cause docketed.

Same day, the appearance of Crampton Harris, Frank W. Rogers and Leonard G. Muse is entered for the appellants.

Same day, certified transcript of the record for use on a petition for a writ of certiorari is furnished Crampton Harris, Esq., counsel for appellants.

April 18, 1944, the appearance of George Richardson, Jr., is entered for the appellee.

April 21, 1944, the appearance of Wm. A. Stuart is entered for the appellee.

Same day, application of the parties, by their respective [fol. 885] counsel, for a stay of proceedings pending application in the Supreme Court for a writ of certiorari is filed.

ORDER STAYING FURTHER PROCEEDINGS—Filed April 24, 1944

Style of Court and Title Omitted

Upon the Joint Application of the parties, by their respective counsel, and it appearing that the appellants are making application in the Supreme Court for a writ of certiorari to this Court in this case,

It Is Now Here Ordered, that further proceedings in this Court in the above entitled case be, and the same are hereby stayed pending final action of the Supreme Court

on the said application of the appellants for a writ of certiorari.

April 22, 1944.

John J. Parker, Senior Circuit Judge.

May 8, 1944, certificate of Clerk of the Supreme Court of the United States evidencing the filing of petition for a writ of certiorari and the docketing of the case in that Court on May 6, 1944, is filed.

CERTIFIED COPY OF ORDER OF THE SUPREME COURT OF THE UNITED STATES DENYING PETITION FOR A WRIT OF CERTIORARI—Filed June 1, 1944

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 969

LOCAL No. 6167, UNITED MINE WORKERS OF AMERICA. An Unincorporated Association Affiliated With the Inter- [fol. 886] national Union, United Mine Workers of America, et al., Petitioners,

vs.

JEWELL RIDGE COAL CORPORATION

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

On Consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Fourth Circuit, and of the argument of counsel thereupon had, it is now here ordered by this Court that the said petition be, and the same is hereby denied.

May 29, 1944.

A True copy. Test:

Charles Elmore Cropley, Clerk of the Supreme Court of the United States, By Hugh W. Barr, Deputy. (Seal of the Supreme Court.)

June 10, 1944, notice of and motion of appellee to set case for hearing at June term, 1944, are filed.

June 21, 1944, twenty-five printed copies of volumes I and II of the transcript of record are filed.

Same day, brief on behalf of the appellants is filed.

PETITION OF SOUTHERN COAL PRODUCERS ASSOCIATION, A COR-
[fol. 887] PORATION, FOR LEAVE, AS AMICUS CURIAE, TO FILE BRIEFS AND TO PRESENT ORAL ARGUMENT—Filed June June 23, 1944

Style of Court and Title Omitted

Southern Coal Producers Association, a Corporation, petitions the Court for leave to appear, by its counsel, as *amicus curiae* in this action and to file briefs and present oral argument.

In support of said petition, petitioner says that:

The Southern Coal Producers Association represents numerous operators of bituminous coal mines in the Southern Appalachian area similarly situated to the appellee herein.

The numerous bituminous coal mine operators represented by petitioner have controversies similar to that presented in this action.

Jewell Ridge Coal Corporation, appellee in this action, is a member of the Southern Coal Producers Association.

The District Court of the United States for the Western District of Virginia ordered that the Southern Coal Producers Association be granted leave to participate, by its counsel, in the trial of this action before it, and to argue the same, and to file briefs therein, as *amicus curiae*.

[fol. 888] Wherefore, said Southern Coal Producers Association prays that this Court permit the Association, through its undersigned counsel, to submit briefs and participate in oral argument in this proceeding.

Southern Coal Producers Association, a Corporation, By its Counsel: Edward R. Burke, 515 Southern Building, Washington, D. C.; John C. Gall, 701 Southern Building, Washington, D. C.

Letter of June 19, 1944, to the Clerk

DEAR MR. DEAN:

Referring to the petition of Southern Coal Producers' Association for leave as amicus curiae to file briefs and to present oral argument, we write to say that the appellee does not object.

Yours very truly, Wm. A. Stuart, George Richardson, Jr., Counsel for appellee.

Telegram of June 15, 1944, to the Clerk

Re United Mine Workers of America versus Jewell Ridge Coal Corporation Appellants have no Objection to Motion of Southern Coal Producers Association to be [fol. 889] Allowed to File Brief as Amicus Curiae Crampton Harris Attorney United Mine Workers of America.

ORDER PERMITTING SOUTHERN COAL PRODUCERS ASSOCIATION TO FILE BRIEF AND MAKE ORAL ARGUMENT AS AMICUS CURIAE—Filed and Entered June 23, 1944

(Style of Court and Title Omitted)

Upon the Petition of Southern Coal Producers Association, a Corporation, by its counsel, Edward R. Burke and John C. Gall, and it appearing that a copy of the petition has been forwarded to counsel for the respective parties, and there being no objection to the granting of the petition,

It is Now Here Ordered by this Court that the Southern Coal Producers Association, a Corporation, be, and it is hereby, permitted to file a brief as amicus curiae and participate in the oral argument in the above entitled case.

June 23, 1944.

John J. Parker, Senior Circuit Judge.

June 26, 1944, brief and appendix on behalf of the appellee are filed.

Same day, brief on behalf of Southern Coal Producers Association as *amicus curiae* is filed.

[fol. 890] ARGUMENT OF CAUSE

June 28, 1944, (June term, 1944) cause came on to be heard before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

[fol. 891] OPINION—Filed October 6, 1944

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 5246

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, an unincorporated association, affiliated with the International Union, United Mine Workers of America; et al., Appellants,

versus

JEWELL RIDGE COAL CORPORATION, a Corporation, Appellee

Appeal from the District Court of the United States for the Western District of Virginia, at Roanoke

(Argued June 28, 1944. Decided October 6, 1944)

Before Parker, Soper and Dobie, Circuit Judges

Crampton Harris (Welly K. Hopkins, Frank W. Rogers and Leonard G. Muse on brief) for Appellants; Georges [fol. 892] Richardson, Jr., and William A. Stuart (Penn, Stuart & Phillips, and Richardson & Kemper on brief) for Appellee; and John C. Gall (E. R. Burke on brief) for Southern Coal Producers Association, as amicus curiae.

PARKER, Circuit Judge:

This is an appeal in a suit instituted to obtain a declaratory judgment to the effect that the Fair Labor Standards Act of 1938 does not require that "travel time" from "portal to portal" be included in the "work week" of miners in bituminous coal mines. Plaintiff is the owner and operator of two mines in western Virginia employing around 900 miners. It brought a class action against two local unions of the United Mine Workers of America and certain of their officers and members. An answer filed on behalf of the defendants denied plaintiff's right to the relief asked and by way of counterclaim asked recovery under the Fair Labor Standards Act for additional wages for work done between April 1, 1943 and June 20, 1943. The District Court rendered judgment for plaintiff and the defendants have appealed. The facts are fully stated in the opinion of the District Court. *Jewell Ridge Coal Corporation* v. *Local No.* 6167 *etc.* 53 F. Supp. 935.

In view of the long established custom in the coal industry not to include travel time in the work week, the collective bargaining contracts extending over a long period recognizing the "face to face" basis of pay, the testimony [fol. 893] before the committees of Congress, the reason and purpose of the Fair Labor Standards Act and the probable effects and consequences of construing the act to require travel time in bituminous coal mines to be included in the work week, there is strong reason for thinking, as everyone connected with the matter seems to have thought until recently, that it was not the intent of Congress that the act should be so construed in its application to the coal mining industry. The reasons in support of this conclusion are fully and ably set forth in the opinion of the learned judge below and need not be repeated. They would be convincing, were it not for the decision of the Supreme Court in *Tennessee Coal Iron & R. Co.* v. *Muscoda Local No.* 123 *etc.* —— U. S. ———, 64 S. Ct. 698, which we do not think can be distinguished in principle from the case at bar.

A distinction is attempted on the ground that the travel time involved in the *Muscoda case* involved travel in an iron mine and the trial judge had found that it was properly includ[illegible] the work week, whereas the travel time here involved is in a coal mine and the trial judge has found it not properly included. This, however, is a distinction without a difference. The record leaves no doubt that travel to the working face in a coal mine is substantially the same sort of thing as travel to the working face in an iron mine; and, while the Supreme Court in the case before it made reference to the findings below, it is clear from the opinion that, irrespective of the findings, the court was of opinion that travel of the sort here involved should be considered work within the meaning of [fol. 894] the statute and included within the work week. The court said in this connection:

"We are not here dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others. Those are the rights that Congress has specially legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner. Accordingly we view Sections 7 (a)

3 (g) and 3 (j) of the Act as necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment. To hold that an employer may validly compensate his employees for only a fraction of the time consumed in actual labor would be inconsistent with the very purpose and structure of those sections of the Act. It is vital, of course, to determine first the extent of the actual work week. Only after this is done can the minimum wage and maximum hour requirements of the Act be effectively applied. And, in the absence of a contrary legislative expression, we cannot assume that Congress here was referring to work or employment other than as those words are commonly used—as meaning physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.

"Viewing the facts of this case as found by both courts below in the light of the foregoing considerations, we are unwilling to conclude that the underground travel in petitioners' iron ore mines cannot be construed as work or employment within the meaning of the Act. The exacting and dangerous conditions in the mine shafts stand as mute, unanswerable proof that the journey from and to the portal involves continuous physical and mental [fol. 895] exertion as well as hazards to life and limb. And this compulsory travel occurs entirely on petitioners' property and is at all times under their strict control and supervision.

"Such travel, furthermore, is not primarily undertaken for the convenience of the miners and bears no relation whatever to their needs or to the distance between their homes and the mines. Rather the travel time is spent for the benefit of petitioners and their iron ore mining operations. The extraction of ore from these mines by its very nature necessitates dan-erous travel in petitioners' underground shafts in order to reach the working faces, where production actually occurs. Such hazardous travel is thus essential to petitioners' production. It matters not that such travel is, in a strict sense, a non-productive benefit. Nothing in the statute or in reason demands that every moment of an employee's time devoted to the service of his employer shall be directly productive. Section 3(j) of the

Act expressly provides that it is sufficient if an employee is engaged in a process or occupation necessary to production. Hence employees engaged in such necessary but not directly productive activities as watching and guarding a building, waiting for work, and standing by on call have been held to be engaged in work necessary to production and entitled to the benefits of the Act. Iron Ore miners traveling underground are no less engaged in a 'process or occupation' necessary to actual production. They do more than 'stand and wait'. *Missouri, K. & T. R. Co.* v. *United States* 231 U. S. 112, 119, 34 S. Ct. 26, 27, 58 L. Ed. 144, Cf. *Bountiful Brick Co.* v. *Giles* 276 U. S. 154, 158, 48 S. Ct. 221, 222, 72 L. Ed. 507, 66 A. L. R. 1402. Theirs is a fossorial activity, bearing all the indicia of hard labor."

That the decision of the Court was understood by the Court itself to be based upon the underlying facts of the [fol. 896] case and not merely upon the interpretation which the lower courts had placed upon those facts, is shown by the concurring opinions, which stressed the interpretation made in the findings of the lower courts. If the interpretation of the facts in these findings had been the controlling consideration in the majority opinion, there would, of course, have been no occasion whatever for the concurring opinions. Furthermore, where the facts of two cases are substantially the same, the law should not be applied differently because trial judges have looked at them in a different way. The record shows that travel in an iron mine is the same sort of thing as travel in a coal mine. The findings of the trial courts as to whether upon the basic facts travel time was part of the work week within the meaning of the statute were mere conclusions involving mixed questions of law and fact; and, the basic facts being the same, an appellate court cannot distinguish cases on the basis of such conclusions. In such case, the difference in conclusions involving mixed questions of law and fact is necessarily attributable to a difference in views as to the law or its application.

Equally vain is the attempt to distinguish the Supreme Court's decision on the ground that no such custom or bargaining agreements existed in the case of the mining of ore as are shown in the case before us. The Supreme Court decided the point on two grounds: (1) that the custom and agreements relied on were not sufficiently shown, and (2)

that they were immaterial in any event. After commenting on the failure of the lower court to find "immemorial" custom or collective bargaining agreements and saying that [fol. 897] the lower court's findings with regard thereto were not so clearly erroneous as to require that they be disregarded, the Supreme Court went on to say:

"But in any event it is immaterial that there may have been a prior custom or contract not to consider certain work within the compass of the workweek or not to compensate employees for certain portions of their work. The Fair Labor Standards Act was not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employee's time while compensating him for only a part of it. Congress intended, instead, to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act. Any custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights."

And in a note to the passage above quoted, the Court said:

"Congress was not unaware of the effect that collective bargaining contracts might have on overtime pay. It expressly decided to give effect to two kinds of collective agreements, as specified in Section 7(b) (1) and (2) of the Act. Cf. Section 8(c). It thus did not intend that other collective agreements should relieve employers from paying for overtime in excess of an actual workweek of 40 hours, regardless of the provisions of such contracts."

What the majority of the court has thus so clearly said we are not at liberty to ignore. It is no answer that the case might have been decided on the ground that the evidence as to custom and contract was insufficient. The court chose to place its decision on the additional ground that [fol. 898] custom and contract were immaterial; and it is settled beyond controversy that in such case the decision is binding authority as to both of the grounds upon which it is based. *Richmond Screw Anchor. Co* v. *United States* 275 U.S. 331, 340; *United States* v. *Title Ins. Co.* 265 U.S., 472, 486; *Union Pac. R. Co.* v. *Mason City Co.* 199 U.S. 160, 166; 14 Am. Jur. 298.

Nor is anything said in the concluding paragraph of the Supreme Court's opinion upon which a distinction can be based. This is not a case "where precisely accurate computation is difficult or impossible", nor is it one of the "borderline cases where the other facts give rise to serious doubts as to whether certain activity or non activity constitutes work or employment". Cf. dissenting opinion of Judge Sibley in the *Muscoda case* 135 F. 2d at 323. What is involved is just the sort of activity as was held by the Supreme Court to "leave no uncertainty" as to its character as "work".

Under the circumstances, there is nothing for us to do but reverse the decision below. If it is thought that the decision of the Supreme Court should be overruled or limited so as not to apply to a case of this character, that is a matter for the Supreme Court and not for us.

The disturbing effect of the decision here will not be so great as it otherwise would, in view of the fact that, by agreement between the miners and operators, the portal to portal system of computing the work week has now been adopted in the industry. An amended answer filed in the cause waives the right to additional wages due under the act prior to April 1, 1943, the date of the expiration of the [fol. 899] contract between the union and the operators; and the amount claimed as additional wages between April 1st and June 20th, 1943, is only the amount voluntarily awarded the workers in other mines as a result of the settlement arrived at when the "portal to portal" basis was adopted. The mines of plaintiff were excluded from the terms of that settlement, as we understand, so that the right to an adjudication of the questions here involved would not be affected.

For the reasons stated, the judgment appealed from will be reversed and the cause will be remanded for further proceedings not inconsistent herewith.

Reversed.

SOPER, Circuit Judge, dissenting:

If certain statements in the opinion in *Tennessee Coal Co.* v. *Muscoda Local*, 321 U.S. 590 are viewed apart from their setting, a reversal of the judgment in the pending case in favor of the mine operators may perhaps be logically deduced; but a reversal will produce a result so inequitable

that we may well inquire whether we should not discard formality and adopt a realistic attitude in resolving the issue, as we are admonished to do in cases of this sort in the opening sentences of that opinion.

[fol. 900] In the pending coal mine case, unlike the *Tennessee case* where conditions in iron ore mines were under consideration, it was found by the District Court upon undisputed evidence that "by the universal custom and usage of the past fifty years and by agreement of the parties in every collective bargaining agreement that was ever made, it was universally recognized that in the bituminous coal industry travel time was not work time". In short, the court found that in the coal mining industry the term "workweek" had come to have the definite meaning of time spent at work at the face of the mine exclusive of travel time; and from this finding the conclusion naturally followed that the term should be given this significance in the application of a statute which does not define the term at all.

This conclusion is now said to be erroneous because in the later decision in the Tennessee case, where the District Court had failed to find any such immemorial custom or collective bargaining agreements, the Supreme Court said, (p. 602), that "in any event it is immaterial that there may have been a prior custom or contract not to consider certain work within the compass of the work week." While this language was used with respect to the different conditions then prevailing in the metal mining industry, it is now taken to mean that custom or contract, no matter how long or how firmly established, must be disregarded in fixing the limits of the work week in all industries.

This line of reasoning produces such an injustice in the pending case that I am loath to believe that it represents a correct interpretation of the statute or the conclusion which the Supreme Court itself would reach if the pending [fol. 901] case were before it. In this case we do not have the picture portrayed in the opinions in the earlier suit of miners struggling against difficulties to obtain the best terms they could get and making repeated unsuccessful attempts to be paid in whole or in part for travel time, where in short travel time was not excluded from work time with the miners' free and uncoerced consent, and the District Court consequently found that there was no custom so

well established that Congress must have adopted it or had it in mind when it used the term "workweek" in the statute. Nor do we have such a decision as that rendered by the Administrator of the Wage and Hour Division of the United States Department of Labor on March 15, 1941 in respect to the metal mining industry that work time starts when the miner reports for duty at the collar of the mine and ends when he reaches the collar at the end of the shift. See 40 F. Supp. 7, 8, 10; 135 F. 2d 322, 323, and 321 U. S. 601.

Quite the contrary has been the situation in the coal mining industry. Not only was there a custom of fifty years' standing, repeatedly embodied in successive collective bargaining agreements, but the custom had the affirmative approval of the powerful union known as the United Mine Workers of America which had been eminently successful in representing the miners' interests. The "face to face" basis for the computation of working time has been traditional in the industry. When the Code of Fair Competition under the National Industrial Recovery Act was drawn up for the industry by representatives of the operators and [fol. 902] of the United Mine Workers and approved by the President of the United States in 1933, it provided that the work day should consist of seven hours' work at the face of the mine. Basic wage agreements for the industry executed by the operators and by the union in 1934, 1935 and 1937 incorporated this provision. Even after the Fair Labor Standards Act passed on June 25, 1938 had become effective in accordance with its terms on October 23, 1938, the same provision was retained in the basic agreement of May 12, 1939 for the period of two years; and it was repeated in a succeeding two year agreement executed on April 1, 1941.

It must not be supposed that this method of computing wages was imposed upon an unwilling union by the superior power of management. It was deemed by both parties to be beneficial to their respective interests as a practical solution of the perplexing questions which would otherwise arise in applying a general wage agreement to a large number of mines in which the travel time necessarily varied on account of diverse physical conditions. This was strikingly shown in 1940 in the course of an investigation of the industry by the Office of Wage and Hour Administration when the representatives of the operators and the representa-

tives of the union on July 9, 1940 united in a letter urging the administration to recognize the traditional contract provision as conforming to the statute. They pointed out that the wage agreements in effect afforded "the highest standards of labor provided in any industry in the United States both as to hours of working time and wages paid"; and they expressed the opinion that the adoption of the "portal to portal" system "would create so much confu-
[fol. 903] sion in the bituminous coal industry as to result in complete chaos." The administration acceded to this view and on July 18, 1940 gave out the opinion that "the practice of computing working time on a face to face basis in the bituminous coal industry would not be unreasonable." It was under this state of affairs that the two year agreement of April 1, 1941 was executed.

It was not until March, 1943, during the negotiations for a new contract to take effect April 1, 1943, that the union suggested that in order to conform with the basic and legal requirements for the industry the maximum hours and working time provisions of the contract should be so phrased as to establish portal to portal for starting and quitting time for all underground workers. But even then it was obvious that the portal to portal basis was proposed in order to justify a flat $2 a day wage increase for all workers because the increase was demanded for all classifications of outside as well as inside day men.

The negotiations were not successful although prolonged conferences were held in an effort to reach an agreement and the dispute was referred to the War Labor Board. There were strikes which resulted in the seizure of the mines by the federal government and intermittent work periods during which the industry operated under the conditions specified in the 1941 agreement. Finally the Secretary of the Interior, representing the government, and John L. Lewis, representing the miners, reached an agreement on November 3, 1943 which included the portal to portal method of measuring work time. Subsequently the greater part of the industry yielded and entered into agreements [fol. 904] on the lines of the Ickes-Lewis agreement.

This change of front on the part of the miners for bargaining purposes, when making an agreement for future operations, could not affect the condition which formerly existed in the industry or transform into work time that

which was not work time in the generally accepted meaning of the term that had prevailed in the industry for a long time when the statute was passed and that continued to prevail with administrative sanction for five years after its enactment. The statute could not have one meaning in the earlier and another meaning in the later period; and the Mining Company was justified in resisting in this suit the application of the portal to portal method of computation for work done by the miners even after the 1941 agreement had expired.

It seems a mistake to suppose that under no circumstances can custom or agreement throw any light on the meaning of the Act in its bearing upon an industry. The language of the Supreme Court in the Tennessee case should not be given this sweeping significance as the decisions of the courts tend to show. For example, it was held in *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, that in the statutory sense the regular rate of pay for any particular week is the quotient of the amount paid per week divided by the number of hours worked in that week, and that overtime must be calculated on this basis, and that unless this is done, it is not sufficient that the wages actually paid exceed the statutory minimum; but, on the other hand, it was held in *Walling* v. *Belo Corp.*, 316 U. S. 624, that an employer could continue to pay his employees the same weekly salaries [fol. 905] without violating the Act because he rearranged the basis of compensation by an agreement which provided for a basic rate of pay per hour for the maximum hours fixed by the Act and one and a half times that rate per hour for overtime together with a guarantee that the employee should receive each week for regular time and overtime not less than a stipulated amount. In view of these decisions, it is obvious that the legality of rate of pay may depend upon an agreement of the parties.

It is suggested in mitigation of the harsh effect of a decision adverse to the Mining Company that the amount claimed by the miners in this case has been limited, by amendment of the counterclaim, to the period beginning April 1, 1943 and ending June 20, 1943. Indeed it is assumed in the briefs that each miner's claim is limited to the sum of $40 and that the total sum involved is approximately $40,000. These statements cannot be verified in the record. The amendment to the counterclaim is not limited to the

period ending June 20, 1943 but contains merely the assertion that the miners will not further assert their claims to travel time prior to March 31, 1943. The end of the period for which the claim is made is not stated; nor is the amount of the claim defined. The assumed limitation of the period to June 20, 1943 and to the sum of $40 per miner seems to be based on the terms of agreements entered into between the union and other mining corporations; but so far as the record discloses, the Jewell Ridge Coal Corporation has never entered into a new agreement or paid for travel time. If a claim is asserted for the full amount due under the Act, [fol. 906] as now interpreted by the miners, a very much larger sum than $40,000 will be involved in this controversy.

Moreover, the decision may be of grave importance in its application to other mine owners who have not dealt with the union or have not signed wage agreements. If the new interpretation of work time is applied to them over the period that has elapsed since the passage of the Act, subject only to local statutes of limitations, and double payment is exacted under the penal sections of the Act, it may be that the mine owners will be subject to losses of huge amounts. Indeed the decision might prove even more sweeping in its effect for it might invalidate the compromise provisions respecting pay for travel time and liquidated damages that form part of contracts between the mine owners and the union in a large part of the industry. If portal to portal pay is required under the Act as a matter of law, such settlements are not binding if the amount paid is less than the actual wages due under the Act; and the mine owners would become liable not only to make up the deficiency but to pay an equal amount in addition as liquidated damages. *Overnight Motor Co.* v. *Missel*, 316 U. S. 572. See also, *Guess* v. *Montague*, 4 Cir., 140 F. 2d 500; *Fleming* v. *Warshawsky & Co.*, 7 Cir., 123 F. 2d 622; *Johnson* v. *Dierks Lumber & Coal Co.*, 8 Cir., 130 F. 2d 115; *Rigopoulon* v. *Kervan*, 2 Cir., 140 F. 2d 506; *Birbalas* v. *Cuneo Printing Industries, Inc.*, 7 Cir., 140 F. 2d 826.

These considerations give force to the conclusion that Congress could not have intended to compel mine owners to pay large increases in wages over and above those specified in prevailing agreements, and also to inflict upon the [fol. 907] mine owners additional sums in the nature of a penalty by giving to the term "work week," as used in the

statute, a significance contrary to that which by voluntary agreement and by long continued custom had prevailed in the industry.

[fol. 908] JUDGMENT

Filed and Entered October 6, 1944.

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 5246

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, an unincorporated association, affiliated with the International Union, United Mine Workers of America; et al., Appellants,

vs.

JEWELL RIDGE COAL CORPORATION, A Corporation, Appellee

Appeal from the District Court of the United States for the Western District of Virginia

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Virginia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the District Court of the United States for the Western District of Virginia, at Roanoke, for further proceedings not inconsistent with the opinion of the Court filed herein.

[fol. 909] October 6th, 1944.

John J. Parker, Senior Circuit Judge.

ORDER STAYING MANDATE PENDING APPLICATION FOR WRIT OF CERTIORARI—Filed November 6, 1944

[Style of Court and Title Omitted]

Upon the Application of the Appellee, by its counsel, and for good cause shown,

It Is Ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed

pending the application of the said Appellee in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, provided said application is filed in the said Supreme Court within 30 days from this date.

November 4th, 1944.

John J. Parker, Senior Circuit Judge.

[fol. 910] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing three (3) volumes is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals, made up in accordance with the directions of counsel for the appellee, for use in the Supreme Court of the United States on an application for a writ of certiorari.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 7th day of November, A. D., 1944.

Claude M. Dean, Clerk, U. S. Circuit Court of Appeals, Fourth Circuit. (Seal.)

[fol. 911] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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